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SALVATORE RICCOBONO—IN MEMORIAM*

THE setting here tonight—the Riccobono Seminar of Roman Law in America—is a fitting spot in which to honor the memory of Salvatore Riccobono, whose death on April 12th deprived the world of an extraordinarily fine person and one whose scholarship made him a master in the field of Roman law. We especially honor the memory of the honorary *magister* of the Seminar.

It is manifestly impossible, in the course of a short address, to do more than highlight some of the significant contributions which have been made by this master. Sixty-five years of scholarly research, devoted to one field alone, leave a record that has seldom, if ever, been surpassed since the revival of the study of Roman law in eleventh century Bologna, and one may query whether any of the Roman jurists themselves worked so long and so brilliantly in their chosen field of endeavor.

Salvatore Riccobono was born January 31st, 1864, not far from Palermo in Sicily, and he was educated in that city. He obtained his law degree from the University of Palermo in 1889, which was followed by four eventful years of graduate study in Germany. He has left us penetrating sketches of each of the professors under whom he studied,[1] three of whom

* An address delivered at a memorial meeting held at The Catholic University of America, Washington, D. C., on May 21, 1958. The abbreviations employed in the notes are familiar, save perhaps for *BIDR* = *Bollettino dell' Istituto di Diritto Romano* (Rome).

1 "L'insegnamento del diritto nelle università della Germania," *Rivista di storia e filosofia del diritto*, 1 (1897), 476-84.

had considerable influence upon his career: Professor Bernhard Windscheid of Leipzig, and Professors Lenel and Gradenwitz of Heidelberg. Although Riccobono was a life-long admirer of German scholarship, he was by no means an uncritical observer. He exposed the exaggerated claims of the Germanists,[2] who were bent on proving that the basic ideas and principles of modern law were of Germanic, and not of Roman, origin. This view, incidentally, has been accepted by no less eminent authorities than Justice Holmes and Professor Hazeltine. Parenthetically, in a visit to Germany in 1942, when praise of the Germanic was expected, Riccobono did not hesitate to extol the pre-eminence of the Roman law, and its mission in the development of legal thought in civilization.[3]

Upon his return to Italy in 1893 Riccobono followed the usual path of the young scholar, serving at several of the smaller universities (Parma, Camerino, Sassari) until appointed to the chair of Roman law at his beloved Palermo in 1897. There he spent the greater part of his teaching career, till he was called to Rome in 1932, where he remained until he retired as Professor emeritus. But he continued to teach the history and exegesis of Roman law at the Pontifical Institute until a few years before his death. Each year he returned to his home in Sicily for rest and recreation and his love of the Dolomites took him there each summer.

Eager to put what he had to say in print when he returned from Germany in 1893, Riccobono published a number of studies. These studies proved to be an introduction to his primary interests during the whole of his career. In 1893, and then in 1894/95, he displayed his ability to single out the contrasts and the development of jurisprudence from the first to the third centuries of our era in two articles analyzing the comments of late classical jurists upon the writings of their

[2] *BIDR*, 43 (1935), 314 ff.

[3] "De fatis iuris Romani," *Studia Humanitatis* (1942), 33-115; the Latin text—but not the German translation—reprinted in *BIDR*, 55/56 supp. (1951), 353 ff.

predecessors.[4] In his evaluation of the significance of juristic writing, Riccobono antedated Ludwig Mitteis by a quarter of a century, when the latter called upon students of the Roman law,[5] "to describe the continuing origin of legal ideas and the development of these ideas from generation to generation in order to show the individual activity of the particular jurists, and so present a biographical legal history of Roman times."

Also in 1893 Riccobono published three articles on possession.[5a] These articles display the first advances toward the theory of the historical development of Roman law, which is clearly one of Riccobono's major contributions to our science. I should like, in a few broad strokes, to characterize a few of the distinct additions to scholarly effort which are owed to Riccobono. I cannot hope to mention all, and probably not ones everybody would consider most significant. But I shall try to give a picture of the nature and directions of this scholar's studies.

By the time Riccobono had completed his study in Germany the goals of his Roman law research activities were clear to him. He set out to reconstruct the internal development of the institutions of the classical law. He worked out for himself the method by which the sources were to be analyzed, an exegesis of the texts with attention drawn to analogical development as well as to conflicting views. To Riccobono, also, is to be attributed the first critical evaluation of the newly re-discovered interpolation technique.[6] From the

[4] "Studi critici sui libri XVIII di Paulus ad Plautium," *BIDR*, 6 (1893), 119-71, republished in *Scritti di Diritto Romano*, vol. I (1957), 1 ff.; "Studi critici sulle fonti del diritto romano, *βιβλία ξξ* Julianus ad Minicium," *BIDR*, 7 (1894), 225-68, and 8 (1895), 169-295 = *Scritti*, vol. I (1957), 45 ff.

[5] L. Mitteis, *Antike Rechtsgeschichte und romanistisches Rechtsstudium* (1918), 17; translated into Italian, and commented upon, in *Annali Palermo*, 12 (1929), 477 ff., 500 ff.

[5a] *Archivio Giuridico*, 50 (1893), 227-81; *Archiv für die Civilistische Praxis*, 80 (1893), 124-27; *BIDR*, 6 (1893), 229-33.

[6] In "Studi critici sui libri," *cit. supra* note 4, 124 ff., and in succeeding works; recently, in such works as "Amicus Plato sed magis amica veritas," *BIDR*, 53/54 (1948), 353 ff., and "Fine e conquisti delle indagini interpolazionistische," *BIDR*, 55/56 (1952), 396 ff.

very beginning he discarded the idea of the search for interpolations—those conscious alterations of juristic writings by later revisers, particularly the compilers of the Justinian corpus—as an end in itself. Interpolation criticism was for him but one of the tools in the determination of the changes—changes more often of form than of substance—in the doctrine of the classical law by the compilers of the Justinian codification. Riccobono perhaps underestimated the extent of pre-Justinian interpolation, but he correctly fought against the radical interpolation 'bacillus,' and the casting out of whole segments of the classical law.

I have mentioned earlier Riccobono's attention to juristic writings as sources for the study of legal institutions. In another effort, by careful analysis and research, Riccobono isolated four strata of materials in the so-called Scholia Sinaitica.[7] Baviera has characterized this study as "a veritable jewel of research method and analysis. Considering the results, one can affirm that there does not exist an equal in all the writing on the subject." [8] In later years Riccobono joined other Italian scholars of his generation in providing the eminently useful and the best-known collection of pre-Justinian sources of the Roman law, the *Fontes Iuris Romani Antejustiniani*,[9] now in its second edition.[10] He also aided in the edition of what is known as the Milan edition of the Digest.[11] Nor should one fail to mention that in a number of articles Riccobono early emphasized the value of the Byzantine sources for the reconstruction of the law of the classical epoch.[12]

[7] *BIDR*, 9 (1898), 217-300 = *Scritti*, vol. I (1957), 273 ff.

[8] *Studi in onore di Salvatore Riccobono nel XL anno del suo insegnamento*, vol. I (1936), xxxviii.

[9] (Florentiae, 1909).

[10] (Florentiae, 1940-1943).

[11] *Digesta Iustiniani Augusti*, recog. et ed. P. Bonfante, C. Fadda, C. Ferrini, S. Riccobono, V. Scialoia (Mediolani, 1931).

[12] Cited by Baviera, *Studi Riccobono, op. cit. supra*, vol. I (1936), xl.

Riccobono's greatest services in broadening the extent of our knowledge, however, rest in his exhaustive analysis of a number of legal institutions in the fields of property and obligations. Many of these studies have become foundation stones in our conception of the corpus of the classical Roman law.

In the field of property he touched on a number of subjects.[13] I shall refer to one: the role of *animus* (intention) in possession. In the early works on possession which I referred to,[14] Riccobono attacked the views of Jhering, who had denied the relevance of *animus* in possession until the very close of the classical period, for he believed that the jurists had considered that any detention was possession. Riccobono showed that this view reflected the ideas of the Republican jurists and was repeated in various decisions of the jurists of the Sabinian school. He noted that Paul had considered that the early jurist, Quintus Mucius Scaevola, had 'most ineptly,' as he said, included cases of detention within the scope of possession. In fact, Riccobono was able to show that it was Labeo who introduced the requirement of *animus* into the doctrine of possession, an element elaborated upon by members of the Proculian school. In quite recent works he has carried on his research on the evolution of the doctrines of possession back into the pre-classical period, and on to the treatment at the hands of the compilers.[15]

Not all of Riccobono's views have gained acceptance. In a charming endeavor of recent date,[16] entitled "Le mie colpe" (My sins), he acknowledges that while in the past he failed to answer his critics, he would now like to do so, at this late

[13] To 1936, surveyed by Baviera, *loc. cit.*, xlii-liv; see also articles in *Nuovo Digesto Italiano*, s.vv. *res nullius*, *servitus oneris ferendi*, and *BIDR*, 47 (1940), 1-30.

[14] *Supra*, note 5a.

[15] "Der Wille als Entwicklungsfaktor im römischen Rechte," *Scritti in onore di Contardo Ferrini*, vol. IV (1949), 55-63, and "La 'voluntas' nella prassi giudiziaria guidata dai Pontifici," *Festschrift Fritz Schulz*, vol. I (1951), 302-09.

[16] *BIDR*, 49/50 (1947), 30-45.

date, 1947. After reiterating his views, he replies to one critic: [17] "If X (the scholar in question) does not believe in the existence of the concept of possession within the *ius honorarium*, which clearly has left its traces in the Digest; if he does not believe in the fusion of the *ius civile* with the praetorian law; if, finally, he returns completely, with respect to terminology, to the doctrine of Savigny, which was certainly unfortunate and the prime cause of the lack of comprehension of many of the problems in the theory of possession, then I may have regrets that I have been unable to convince him, but not that I have not done my best in the interests of our studies and in the progress of our science."

In the field of obligations Riccobono greatly enriched our understanding.[18] For example, it was recognized that the inviolable principle of the *ius civile* which denied the possibility of direct agency in the classical Roman law, repeated in Justinian's compilation, admitted in exceptional cases the possibility of acquiring rights through representatives. Riccobono showed [19] that all of these exceptional cases were of praetorian origin, in the sense that the praetor had granted an action on the case (*actio in factum*) or actions by fiction, to guarantee the protection of the principal for acts done by agents. He further showed that all the cases preserved by the Byzantines were in actuality classical, and that these were not exceptional cases but the normal development of the law, here, as always, the law of the praetor advancing beyond the *ius civile*.

In another aspect of obligations, Riccobono made a noteworthy contribution. I refer to the nature of the stipulation and the theory of contract. In this instance I am happy to

[17] *Idem*, p. 45.

[18] Besides the works surveyed by Baviera, *Studi Riccobono, op. cit. supra* note 8, lv-lxviii, see the work cited *infra*, note 20.

[19] "Lineamenti della dottrina della rappresentanza diretta in Diritto Romano," *Annali Palermo*, 14 (1930), 389-447, an abridged version of which appeared as "Reception of Forms of Agency in Roman Law," *N.Y.U. Law Quart. Rev.*, 9 (1932), 271-79.

say that the penetrating analysis and far-reaching conclusions are now available in English translation, a translation by the late J. Kerr Wylie, revised and brought up to date by Professor Beinart of the University of Cape Town, published in 1957.[20] In the preface, the author himself summarizes: [21] "As regards stipulatio, the theories of Rudolph Gneist, whom I knew in Berlin in 1891, held the field for some time. He maintained that the oral stipulation of the Romans, even though it had become a written document already in classical times, always remained in classical as well as later law a juristic act dependent on the pronouncement of formal words by both parties. In contrast to this doctrine, I contended that until the reign of Diocletian the stipulation retained its rigorous oral form and after that it became fused with the written document in the customs of the Eastern countries, thus acquiring dispositive force to create either a real or a personal right. It, however, received legislative recognition only with the constitution of Leo in 472 A.D. It was thus acknowledged that the stipulation could be made in writing. The results of this acknowledgement were of the greatest importance, because subsequently every agreement written or oral, was recognized as creating legal obligations and giving rise to an action. I asserted, in opposition to Savigny, that the principle that every agreement, if so intended by the parties, could beget an action, had a Roman origin. . . . Now in my ninety-first year, I still believe firmly that Rome and her wisdom can alone guide us to the truth. November 1954."

So much for Riccobono's contributions in the area of substantive law. In passing, I should note that he treated of the law of persons and of succession in very few studies.[22] But

[20] *Stipulation and the Theory of Contract* (1957). This book is a translation of the articles in *Zeitschr. d. Savigny-Stiftung f. Rechtsgeschichte*, roman. Abt., 35 (1914), 214-305, and 43 (1922), 262-397, plus additions in *BIDR*, 31 (1921), 29-39, and parts of *Corso di Diritto Romano: Stipulationes Contractus Pacta* (1935).

[21] Pp. vii f.

[22] Baviera, *Studi Riccobono, supra* note 8, lxix-lxx.

there are two general problems in which his efforts were formidable.

The first of these general topics is the influence of Christianity upon the Roman law.[23] He recognized the factors which had led nineteenth century scholars to denigrate the effect of the Christian religion upon the law of post-classical times. And he proceeded to demonstrate the extent to which the law had been changed by religious belief and practices. I should remark that this was one of the two topics he lectured upon during his visit to this country.

The second topic, and one to which Riccobono devoted more than a score of articles,[24] some book-length in scope, and to which many of his substantive law studies were pertinent, may be succinctly described as the nature of the historical evolution of the Roman law. In my own first address before this group,[25] more than a quarter of a century ago, I tried to portray the two diverse views of students of the Roman law. One group, represented by Collinet, embellishing the efforts of Mitteis in his volume *Reichsrecht und Volksrecht,*[26] and depending on the discoveries of the legal papyrologists, maintained that there was a distinct Hellenistic oriental influence upon the Roman law after the time of Diocletian; that the classical Roman law ceased to be a dynamic force in the middle of the third century; and that the influence of the eastern, Byzantine schools of law was predominant in later times. The other group, represented by

[23] To Baviera's survey, *op. cit.*, lxx-lxxv, add the summary in "Roma madre della leggi," *BIDR*, 57/58 (1953), 1, 43 ff.

[24] Baviera, *op. cit.*, lxxv-lxxvi; also, of prime importance, review of Schulz, *History of Roman Legal Science*, in *Traditio*, 6 (1948), 374-77 = *Scritti*, vol. I (1957), 447 ff.; "La definizione del ius al tempo di Adriano," *Annali Palermo*, 20 (1949), 1-122; "Cognitio extra ordinem. Nozione e caratteri del 'ius novum,'" *BIDR*, 55/56 (1952), 1-17.

[25] "Sources and Influences of the Roman Law, III-VIth Centuries," reproduced in *Georgetown L. Jour.*, 21 (1933), 147-60.

[26] L. Mitteis, *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs* (1891).

Riccobono and a few faithful adherents, maintained that there was only one break in the continuity of Roman legal development, and that was at the time of the Punic Wars when Rome changed from an agricultural to a mercantile state. From the middle of the second century B.C., right up to the time of Justinian, in fact, right up to modern times, there was one continuous development. Changes were brought about by internal evolution, such as the establishment of the *cognitio* procedure and the gradual abolition of the formulae; or the fusion of the *ius civile* with the *ius gentium* and the *ius honorarium,* and the development of a *ius novum;* or, finally, the relaxation of form and the emphasis on ethical ideas. These devolopments were certainly aided by eastern practice and Christian principles, but the evolution was organically Roman.

I can only note that the dispute still goes on.[27] The disciples of the eastern-oriental influence have recognized that their position was too extreme, while the followers of Riccobono have given some ground; but I will not attempt to go into the ramifications of the problem. I refer you to Baviera's summary of Riccobono's articles (to 1936) in his evaluation of the master's work,[28] or to Beinart's brief remarks in the introduction to the translation of *Stipulatio,*[29] or to Riccobono's early expression of his views in English in the *University of Pennsylvania Law Review.*[30]

I have indicated the great debt of the scholarly world to Salvatore Riccobono for his remarkable efforts in the field of Roman law. I should like now to spend a few moments in recounting the contribution of Riccobono to the study of Roman law in America.

[27] See, for example, Arangio-Ruiz, *Storia del diritto romano* (7th ed., 1957), cap. XIII: "La formazione del diritto privato romano-ellenico," and supplemental notes, 424 ff.

[28] Baviera, *op. cit. supra* note 8, lxxv-xci.

[29] Riccobono-Beinart, *cit. supra* note 20, xviii ff.

[30] "Outlines of the Evolution of Roman Law," *Univ. Penna. L. Rev.,* 74 (1925), 1-19.

I cannot speak for the lectures which he delivered during his stay in this country, in 1928/1929. From his final address [31] I can judge his thorough enjoyment of the American experience. He had been given the opportunity to present to American students his undying faith in the study of the Roman law: "Roman law is a living science, yielding instruction full of life. This, its essence, comes from its lasting content of truth as regards the categories of juridical thought; comes from its precision; comes from the practical sense of the Romans who knew how to present the idea of law in a manner always corresponding to reality, to the exigencies of life without mixing it up with the enervating and fanciful ideologies of life; comes from its spirit and universal content which are the outcome of the union of all ancient nations under the guidance of Rome. In short, this eternal youth inherent in Roman law arises from the fact that law is found everywhere, wherever human society exists. The *true science* of law, however, is only *one*, the *one* Rome created."

The Riccobono Seminar of Roman Law in America was established in memory of these lectures. This institute has experienced the vicissitudes of all such organizations. A hesitating start, a re-birth under the auspices of The Catholic University of America, a tremendous upsurge in the years before the war, the foundation, and for more than a decade, the publication of *Seminar*, a journal which gained international recognition, and now, temporarily I hope, a breathing period before the increased activities of the future.

After its reconstitution in 1935, Riccobono reported in full the discussions of the sessions of the Seminar, during the following years, in the international journal of Roman law of which he was editor, the *Bullettino dell'Istituto di Diritto Romano*.[32] In this way, the students of Roman law in this country, Americans as well as refugees, gained an inter-

[31] Typed copy, Address at the Cosmos Club, Washington, May 27, 1929.

[32] Sessions for the academic years 1935-36 to 1938-39 in *BIDR*, vols. 43-46 inclusive.

national audience. The papers we read in those days are the ones European scholars cite even today. Riccobono not only reproduced our words, but he commented at length, complimenting us on our approach and analysis, continually pressing us to go on, and " to enter the arena with fresh and youthful energies." [33]

I well remember the closing session of my first term as *magister,*[34] a May evening twenty years ago. Judge Blume read a paper on the Justinian Code. Professors Yntema and De Sloovere, and then Dean Wigmore commented upon the significance of the study of Roman law. Dean Wigmore noted that Professors Beale and Williston, also participating in the program, brought the three of them together, fifty years after their initial meeting as students and members of the *Harvard Law Review.* Among the guests were a Justice of the Supreme Court of the United States, the Chief Judge and a Senator from the State of Wyoming, judges and law professors, besides students and residents of Washington. Riccobono did not fail to comment at some length upon this meeting.[35] " Nei suoi fasti aurei," " one of its red-letter days," he concluded, "a glorious day for the Seminar because the distinguished discussion shows the place which Roman law now occupies in America."

Two years later Riccobono himself contributed a paper to the Seminar. This paper was induced by some remarks made by Professor Neff, four years earlier, in a paper before the group on the influence of Roman law upon American jurisprudence.[36] Riccobono's paper was a careful analysis of the origin and development of the doctrine of compensation for expenditures on the property of others in the Roman law. Unfortunately, the paper exists only in English in mimeo-

[33] *BIDR,* 45 (1938), 340.

[34] Report of the session in *BIDR,* 45 (1938), 416 ff.

[35] *BIDR,* 45 (1938), 341 ff.

[36] Summarized in *BIDR,* 44 (1937), 433-38.

graphed form,[37] but it appeared in Italian in the *Bullettino*.[38]

The war brought a halt to Riccobono's promotion of the study of Roman law in America, but as soon as contact was re-established, there was a message to the then *magister* of the Seminar, Professor Ernst Levy: [39] "The work of post-war reconstruction will require the participation of all men of thought; and among the grave problems demanding solution, juridical questions will certainly occupy an important place, to guarantee the order and discipline of the new world that is to be born of the present conflict. Hence new and important duties will fall also upon the Romanists, and the Institute which you direct at present will surely find itself in first place among them. . . . It is to be hoped that the interest in Roman legal studies will not diminish as a result of the crisis through which our world is now passing. In fact, I believe that the study of Roman law has a great future in America."

That, so far as I know, was the last public pronouncement of Riccobono on Roman law in America. But I may add a personal note. There are undoubtedly many of you in the audience who had a far more extensive contact, both in correspondence and in conversation with the Maestro, than it was my good fortune to have. Nevertheless, I cherish the letters that came from his hand (in the last years dictated to and written by his adopted son), and the hours I spent in his charming company.

There is a letter, just ten years old, dated May 27, 1948, in which he writes that he is looking forward to the opportunity of seeing me again on my projected visit, and expressing to me his gratitude and his faith in America. He closes with the salutation, "Viva l'America," the identical words he used when he closed his lectures in Washington on May 27, 1929, nineteen years before, to the day.

[37] *Bulletin of the Riccobono Seminar of Roman Law in America,* No. 42.

[38] *BIDR,* 47 (1940), 1-30.

[39] Translated into English in *Seminar,* 3 (1945), 69-73; the Italian version in *BIDR,* 49/50 (1947), 1-5.

I should like to close my appreciation of the contribution of Professor Riccobono to the world and to America, in particular, by referring to the remarks of another prominent Romanist, Professor Paul Koschaker. In the preface to his *Europa und das römische Recht*,[40] he extends his thanks to his friend, Salvatore Riccobono, who "in his 83rd year, retained his youth and his enthusiasm for the mission which the Roman law had, even at this day, still to fulfill, in a culture shaken to its very foundations, and whose name graced the only academy of Roman law, the Riccobono Seminar of Roman law in America, thanking him for his interest in this book, and permitting the author to dedicate it to him." I am sure you, in this audience, all would have joined with Professor Koschaker, in the dedication, "to Salvatore Riccobono, the untiring champion of the study of the Roman law, and friend."

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[40] Koschaker, *Europa und das römische Recht* (1947, repr. 1953), p. xi.

THE POLISH DOCTRINE OF THE LAW OF WAR IN THE FIFTEENTH CENTURY: A NOTE ON THE GENEALOGY OF INTERNATIONAL LAW

I

AT THE beginning of the fifteenth century Polish canonists formulated, in a number of works, a full system of the law of war, and a restatement of the legal principles governing the relations between states.

De bellis iustis, a sermon by Stanislaus de Skarbimiria (Stanislaw of Skarbimierz), which contains an exposé of the Polish doctrine in its entirety, is the central work in this series of studies. It is a comparatively short document calculated to be delivered within one hour, and containing not quite four thousand words. It is an abstract treatment of the theme of what are the conditions of a just war, whether it is possible to convert infidels forcibly, and therefore whether religious wars are permissible, whether a Christian prince may have an alliance with the infidels, and finally whether infidels may justly conduct a war with Christians.[1]

Important elements of Stanislaus' doctrine were elaborated in a series of short treatises prepared by Paulus Vladimirius (Pawel Wlodkowic of Brudzew), and circulated among the participants of the Council of Constance. On July 5, 1415, Vladimirius distributed two treatises, *Saevientibus,* one on papal power and the other on the power of the emperor with regard to pagans, for the purpose of demonstrating that the papal and imperial *privilegia* claimed by the Teutonic Order

[1] There exist seven almost contemporary manuscripts of the Sermon, dating from the first half of the fifteenth century. See: Zofia Budkowa, Rekopisy kazania "de bellis iustis," pp. 215 ff. in Luwik Ehrlich, *Polski Wyklad Prawa Wojny XV Wieku* (Warszawa, 1955), (Ehrlich, *Polski Wyklad*). The text of the Sermon was printed in the *Polski Wyklad,* pp. 90-145.

to enable it to conquer the pagan dominions could not be legal. These two treatises were summarized by Vladimirius in the form of fifty-two conclusions which were circulated separately. In 1416 Vladimirius circulated a doctrinal exposé of his earlier arguments in a treatise *Ad aperiendam,* and in 1417 he wrote another short rebuttal, *Quoniam error,* of the Teutonic answers to his earlier works.[2]

An additional elaboration of some aspects of the Polish doctrine, in particular in regard to the legality of alliances with infidels and heretics and their rights to have states and property, was contained in a short legal opinion, *consilium, Revocatur,* prepared for the use of the royal chancellery in Cracow. The author of the *consilium* cannot be established with certainty but its language suggests that it was either Stanislaus or Vladimirius. However, it cannot be excluded that the views of the two canonists were summarized by a third person.[3]

The final document in this series is a letter from Vladimirius of March 1432 to the Bishop of Cracow, Olesnicki, the chancellor of Poland. It was written from Padua under the impressions created by the agression of the Order in connection with the rebellion of Swidrigiello in Lithuania, and discusses ways and means of ending the conflict with the Order.[4]

These documents and studies were produced in the course of less than twenty-five years. The date of the sermon is estimated at 1410, and the letter of Vladimirius is considered to be the last of the series.

In the tradition of the international law scholarship of the two canonists Vladimirius fared better than Stanislaus. Dlugosz described his activities in his famed history; Hardt, the editor of the *Corpus Actorum* of the Council of Constance

[2] Ludwik Ehrlich, *Pawel Wlodkowic i Stanislaw ze Skarbimierza* (Warszawa, 1954), pp. 67-68, 76-81, 95 (Ehrlich, *Wlodkowic*).

[3] Ehrlich, *Polski Wyklad,* pp. 193-207. *Consilium Revocatur* was preserved in one copy in the Library of the Jagellon University of Cracow.

[4] Ehrlich, *Wlodkowic,* pp. 136-137, 180-184. Not published, manuscript No. 232 in the Czartoryski Library.

described his part in the Council; and finally Lenfant, a protestant historian, in his *Histoire du Concile de Constance* (1714), gave a resumé of his views and opinions. In the course of the nineteenth century his contributions were described and analysed, and his works were published, first in excerpts and later *in toto*.[5] His place in the line of Polish writers who contributed to the study of international law was recognized by Kasparek who wrote a basic work on the subject of such contributions.[6] Among the more recent writers on Vladimirius is Ernest Nys who was familiar with his works and praised the magnanimity and broadness of his views.[7]

The sermon of Stanislaus fell into oblivion, and this probably contributed more than anything else to the limited attention attracted by the Polish doctrine of the law of war. The reconstruction of this doctrine, formulated at the beginning of the fifteenth century, involved, therefore, the study of a number of works. Polish canonists extracted from the encyclopedical manuals for confessors, and from the works of theologians and canonists, various principles and maxims for the formulation of a complete (for its time) system of the law of war, which remained the most important part of international law even as late as the time of Grotius. The Polish canonists also demonstrated that in their time there already existed the possibility of a scholarly systematic treatment of international law in a manner not much different from that of their famous successors.

The doctrine worked out by the Polish canonists is Polish in a sense different from the way in which the works of the Spanish school of international law are Spanish. The works of

[5] Ehrlich, *Wlodkowic,* pp. 193-195. Hardt, von der, *Rerum Concilii Oecumenici Constantiensis,* Vols. II-IV (Frankfurt and Leipzig, 1697-1699). Lenfant, Jacques, *Histoire du Concile de Constance* (Amsterdam, 1727). *Lites ac res gestae inter Polonos ordinemque Cruciferorum* (*Lites*), (Poznan, 1856). *Starodawne Prawa Polskiego Pomniki* (Krakow, 1878) (*SPPP*).

[6] Ehrlich, *Wlodkowic,* p. 195. Kasparek, Franciszek, *Udzial Polakow w uprawie prawa miedzynarodowego* (Lwow, 1885).

[7] Nys, Ernest, *Les origines du droit international* (1894), p. 150.

Victoria, Suarez and Ayala are the works of Spaniards. Victoria's theoretical position, however, was actually contrary to Spanish imperial interests, and his *Relectiones* drew a rebuke from the King of Spain.[8] Polish canonists expounded and defended the actual policies of the Polish King in their scholarly works. This is responsible for the remarkable unity of the doctrines formulated in so many works from two or even three pens. Vladimirius and Stanislaus, and also possibly a third canonist, the author of the *consilium Revocatur,* were members of the highest governing circles and acted as legal counsels, diplomats, and learned experts for the Polish throne. The letter of Vladimirius to the Bishop of Cracow, the chancellor of the Kingdom, was the letter of a high government official, retiring from a diplomatic post, to his chief, expounding his views on a central problem of the foreign policies of the state.[9]

The present article endeavors to summarize the results of contemporary research on the Polish contribution to the elaboration of the system of international law. Here belong in particular the conclusive works of Professor Ludwik Ehrlich, an eminent successor of the canonists in the *Academia Cracoviensis,* whose recent studies have crowned more than a quarter of a century of research in this field.[10]

II

Just as Grotius, while writing his *De Iure Praede,* and Victoria, while delivering his *Relectiones De Indis* and *De Iure Belli,* were facing a new situation in international relations, so also Vladimirius and Stanislaus formulated their doctrines prompted by the great changes in the political morphology of Eastern Europe. The Polish-Lithuanian union fundamentally

[8] Ehrlich, *Polski Wyklad,* p. 85.

[9] Ehrlich, *Wlodkowic,* pp. 140-141.

[10] Professor Ehrlich had already pointed out in his first edition of *Prawo Narodow* (*Law of Nations*), Lwow, 1932, the basic identity of the views of Vladimirius and Victoria, p. 32.

affected the balance of power in that part of the world. This fact and the simultaneous national integration of Poland permitted the Polish king to take definite steps to halt the aggressive wars waged by the Teutonic Order in Prussia against Poland and newly christianized Lithuania. The Polish resistance resulted in the battle of Grunwald (1410) which destroyed the power of the Order and brought about its decline.

Polish-Lithuanian cooperation, however, raised several important issues in European public opinion. It was questioned as to whether it was permissible for a Christian monarch to have heretics (Orthodox subjects of the Lithuanians) and infidels (the population of Samogitia was still pagan) as allies. Furthermore, Poles and Lithuanians were reproached for having taken arms against a religious order which had been given possession of the pagan dominions by papal and imperial grants and *privilegia*. The very question of the status of the pagan states was discussed, and a conflict of opinion as to the rights of the Pope and his powers in regard to pagan possessions flared up anew. The more liberal school which recognized that infidels and pagans had certain rights which had to be respected clashed with persons holding the theory that since the coming of Christ all power, honors, and property had passed from the pagans to the Christians, and that pagans were incapable of having states or property or of exercising power.

The crisis in Poland's relations with the Teutonic Order had already occupied the attention of the Roman Curia and of the Roman King for some time, and was the subject of international mediation and arbitration, and as a result both sides were actively engaged in explaining the issues at stake. After the battle of Grunwald the diplomatic action of the Teutonic Order was intensified considerably, and its complaints against Poland were placed on the agenda of the Council of Constance (1414-1418), which gathered to end the papal schism and to put the Christian house in order, and in

due course became one of the most important international congresses of its kind.

Similar doubts were also troubling the minds of Polish ruling circles. At the moment when they were approaching a showdown with a dangerous opponent who enjoyed the enormous prestige of a monastic order the Poles were experiencing great moral difficulties. Was it right for a Christian knight to fight the Order in an alliance with Tartars and Russians who, as they knew from experience, could not be expected to wage war according to the rules of warfare obligatory for the members of a Christian community? There was considerable concern over the possible hardships which might be suffered by the peaceful population as a result of the presence of barbarians in the Polish armies. The problem of moral responsibility for the sufferings of the innocent was uppermost in the minds of many.

These various problems influenced the approach and the scope of the works of the Polish canonists. While the treatises of Vladimirius were designed to refute the arguments of the Teutonic Order in an international forum before the great assemblage of the Council of Constance, the sermon of Stanislaus had a different purpose. In all probability it was delivered at the Royal Court in Cracow a year or so before the war, with the participation of the faculty of the *Academia Cracoviensis*. It was a learned exposé of the basic principles on which the policies of the Polish king rested. It was also intended to serve as a ready reference source for the Polish clergy to use in sermons addressed to the wider circles of the faithful. We have a testimony of Dlugosz that some days before the battle of Grunwald the Bishop of Plock, Kurdwanowski, a doctor of the University of Bologna and an eminent theologian, who later represented Poland at the Council of Constance, delivered a sermon to the army along the same lines as the sermon of Stanislaus.[11]

[11] Ehrlich, *Polski Wyklad*, p. 13.

The authors of the Polish doctrine of the law of war came from the Academy of Cracow, which was experiencing a period of great growth and prosperity. Founded in 1364 by the last king of the Piast dynasty it became the object of special care of the founder of the Jagellon line and his queen. It was expanded to provide the new great power emerging from the union of two nations with a staff of diplomats, high officials and leaders able to manage the affairs of state. Professors of the Academy came from the ranks of young scholars who, under a regular scholarship program, were selected for their abilities and talents irrespective of their social origin (Vladimirius was a nobleman and Stanislaus a burgher) for study abroad. Some of them made their career in the church, others in the royal chancellery, and still others served the state as experts in the law or as diplomatic agents. Some of them went from assignment to assignment.

Both Stanislaus and Vladimirius studied in Prague and both were, at various times, rectors of the *Academia Cracoviensis.* Stanislaus lectured on the *Decretum Gratiani* at the university and, according to tradition, also gave a course on the decretals of Gregory IX.

There is less information on the academic role of Vladimirius. In one of his treatises he described himself as the rector of the Academy of Cracow. In Padua, where he went from Prague, he studied under Zabarella, who later became a cardinal and was one of the leading personalities at the Council of Constance. In 1411, Vladimirius, already a canon and *custos* of the Cracovian diocese, received a doctorate from the Academy of Cracow. It seems, however, that teaching was not his main activity, and that he served the Polish crown mainly as a diplomat and jurist. In addition to his important activities in Constance he also traveled on missions to Rome, Buda, and other places.[12]

In Poland, as elsewhere in Western Europe, the flourishing canonistic studies produced an intellectual leadership which

[12] Dlugosz, *Dziela,* Vol. IV, p. 525. Ehrlich, *Wlodkowic,* pp. 50-51.

consisted of learned ecclesiastics who demonstrated in Constance that they could hold their own against the best minds of the times, and offer a successful defense of the policies of the Polish king. In addition to Wlodkowic, who was the chief pen of the Polish embassy to Constance, the Polish delegation included the archbishop of Gniezno, a distinguished lawyer and scholar; the bishop of Plock and a doctor of Bologna, who became one of the four justices of the Council; Peter Wolframm, a representative of the Cracovian Academy, and a master and professor of law of that academy; and the Bishop of Poznan, a doctor of the University of Padua.

For these men the arguments of Stanislaus and Pawel were statements of practical policies, clothed in the language in which diplomatic business was transacted and which international propaganda used as its regular medium. High Polish dignitaries translated into the language of the canonistic doctrines the postulates which Polish policies were endeavoring to realize. They contended that the protection of the law should be extended not only to the dominions of Christian monarchs but also to the states of the pagans, which should also be recognized as inviolate and not to be disposed of without the consent of their peoples, that nobody, including princes and popes, has an unlimited right to wage a war, and in particular that religious wars were prohibited. Polish canonists denied the right to fight a war to everybody but a public authority and demanded that damage resulting from unjustified aggressions should be indemnified.

These principles, if recognized by the public opinion of the international world of that day, would have justified the defense of the Polish Lithuanian dominions against the aggression of the Teutonic Order, challenged the disposal of their provinces in papal and imperial *privilegia,* and laid the foundations for a claim of indemnity from the Order. But at the same time the formulation of the Polish doctrines advanced the development of a number of important propositions basic for the system of international law of all times,

determining the membership and scope of the community of nations, the rights of states and of nations, and the prohibition of ideological wars.

III

Stanislaus and Vladimirius refer to three legal systems: the law of the church including the Scriptures and the canons, natural law, and *ius gentium*. Stanislaus refers only once to Roman law, which was not current in Poland as it was not a part of the Holy Roman Empire. Vladimirius refers to Roman law on several occasions. Writing for an international audience he considered it useful to invoke a legal system which was well known in the West.[13]

Following St. Thomas and the *Decretum Gratiani*, Stanislaus and Vladimirius refer to the concept of natural law in two connotations. In the broadest sense natural law is equated with the natural order. The right of self-defense, the right to the preservation of peace, is common to all human and to all other living creatures.[14] In addition *ius naturale* is the legal system in force among all peoples, including pagans.[15]

The foundation of natural law is reason, and reason provides the most important argument for our canonists when they discuss an important point of their doctrine. So, for instance, Stanislaus, explaining the legality of alliances with infidels, states that nobody in his right mind would deny the right of a prince to make an alliance with infidels if this were the only means by which he could assure peace to his country.[16]

[13] See Ehrlich, *Wlodkowic*, pp. 141 ff.

[14] Sermon, paras. 19 and 29 ff.

[15] "Item ius naturale idem est apud omnes; sed principes vim vi repellentes iure naturali tuentur, in quo cum paganis conveniunt: igitur quantum ad hoc ipsis uti possunt." Sermon, para. 32, cf. St. Thomas, *Secunda Secundae*, q. 57, art. 3, "utrum ius gentium sit idem cum iure naturali." *Decretum Gratiani*, c. 7. D. 1.

[16] "Et si forsitan propter adversariorum fortitudinem se ipso pacem recuperare non valet, quis sane mentis imputare velit, quod sibi associatis tunc eciam infidelibus, si aliter providere non valet, pacem tam salubrem et utilem sibi procurat, cum id ius naturale concedat." Sermon, para. 29 in fine.

Ius gentium is for Stanislaus a branch of natural law which also applies to pagans and to their relations with the Christian world. According to Stanislaus (who follows Gratian, C.9.D.1) *ius gentium* governs, among other things, the conduct of war.[17]

There is little difference in the views of Vladimirius. *Ius gentium,* or *ius gentium naturale* as he calls it, is based on natural reason (*de iure gentium quod est ius humanum procedens ex naturali ratione*). In another place *ius gentium* is a branch of natural law (*a iure naturali . . . sic dicto recedit*).[18]

In the minds of the canonists there is a strict distinction between the law of the Church, the natural law, and *ius gentium.* Natural law and *ius gentium* (*gencium*) have different origins from the law of the Church which is fundamentally an enacted law.

Christian princes and the Pope have to obey the law of the Church, and their duties towards pagans are also ruled by the law of the Church, but it does not create duties or rights for pagans. The rights of the pagans are under natural law, *ius gentium* or *ius gentium naturale.* In *Quoniam Error* (1417) Vladimirius states that the emperor exercises no power over pagans as they are not subject to either divine, canon or civil law. No positive law forces them to recognize the supremacy of the pope or of the emperor, and it is illegal to force anybody to do something which he is not obliged to do.[19] In another place Vladimirius asserts that pagans have their states and dominions on the basis of natural law.[20]

[17] Sermon, para 33. "Item bella sunt de iure gentium, que quantum consonant iusticie, ab ecclesia amplectuntur." Cf. *Decretum Gratiani,* c. 7, D. 1. "Ius naturale est commune omnium nationum, eo quod ubique instinctu naturae non constitutione aliqua habetur: ut . . . violentiae per vim repulsio."

[18] *Lites,* Vol. II, p. 327, "sunt enim dominia de iure naturali gentium." "Apud infideles esse iusta dominia ac de iure gencium naturali."—Letter of Vladimirius to Olesnicki.

[19] *SPPP,* Vol. V, p. 281.

[20] "Cum tamen nullus dubitat sane mentis apud infideles esse iusta dominia ac de iure gencium naturali." Ehrlich, *Wlodkowic,* p. 183.

The systematization of legal sources as used by the Polish canonists survived practically unchanged and unchallenged until Grotius' famous classification of the various branches of law. But even Grotius was unable to depart altogether from the canonistic concept of the hierarchy of legal norms applicable to various fields of legal relations. In the opening paragraph of his great work he described international law as law derived from nature, established by divine ordinances, or having its origin in custom and tacit agreement. In another place Grotius more specifically, and in contradiction to what he said in the beginning, counterposed the law of nations to *ius naturale,* as the law of nations, according to him, was *ius voluntarium* and its binding force rested on the agreement of the subjects of international law. At the same time, somewhat illogically, he did not exclude natural law, which is accepted by humans because men are reasonable beings, from the system of legal norms governing the relations between states. We can therefore distinguish two lines of thought in Grotius. *Ius gentium* as the law among peoples is based on natural reason. This line was present in Victoria, in Suarez, and in the doctrines of the two Poles. To this a new element was added by Grotius: the agreement between states, either express or tacit, evidenced by the practice of states. But in this he was not consistent and contributed little if anything to the modern methods of establishing the content of the rules of international law.[21]

IV

The factual and political elements of the situation facing the Poles were, in terms of legal problems, identical with those which prompted Victoria to formulate his doctrine of international law. In 1493 Pope Alexander VI divided the newly discovered territories in the new world between Spain and Portugal. The King of Spain could also claim dominion of the new world as Emperor of the Holy Roman Empire,

[21] Cf. Prolegomena, 1. 48; also Book I, Chapter I, XI and XIV.

dominus mundi, and the ruler of the pagan lands. The Teutonic Order in its complaints against the Polish King who, by his victory, threatened its existence, invoked papal and imperial *privilegia,* which also gave the lands and dominions of the pagan state to the Teutonic Order.[22]

At the time when Stanislaus and Vladimirius formulated their doctrines, two schools of thought concerning the rights of infidels and heretics were current. One, based on the centralistic concept of the international community of Christian states, with the pope and the Roman king at the apex of Christian society, accorded no rights to infidels. The other, which was formulated under the impact of the crusades and of the growing consciousness that the earlier theory could not be practically maintained, recognized that infidels had a place in the social and international order of the temporal world. One of the most important representatives of the first doctrine, Henricus de Segusio, cardinal of Ostia (Hostiensis), was of the opinion that the war of Christians with infidels was always just for the Christians.[23] Hostiensis' theory was later repeated and amplified by Lignano,[24] Laudensis,[25] and others. The other tendency took a more realistic view of the position of the international community at the time.

Stanislaus and Vladimirius adopted the views of the eminent jurist and Pope Innocent IV (Sinibald da Fiesco) [26] which were later amplified by Zabarella,[27] Vladimirius' pro-

[22] Ehrlich, *Wlodkowic,* pp. 147-148.

[23] *Henricus de Segusio* (Cardinal of Ostia, Hostiensis, died 1271), *Summa Aurea* (Venice, 1586). See Ehrlich, *Wlodkowic,* pp. 150-151. Cf. Ehrlich, *Polski Wyklad,* pp. 32-33.

[24] Joannes de Lignano, *De bello, de represaliis et de duello* (1360). See Ehrlich, *Polski Wyklad,* p. 47.

[25] *Tractatus episcopi Laudensis contra Polonos* (1415?). Ehrlich, *Wlodkowic,* p. 198.

[26] *Innocenti papae quarti. Apparatus quinque librorum Decretalium* (first half of the XIII century). See synopsis of texts, Ehrlich, *Polski Wyklad,* p. 36.

[27] Zabarella, Franciscus Cardinalis, *In libros Decretalium.* See Ehrlich, *Wlodkowic,* pp. 146-147.

fessor in Padua, who, as cardinal, was one of the important personalities in Constance. According to Innocent IV pagans may have property and states because the world was created for all, including pagans. It is also possible for them to acquire property from Christians through *prescriptio longi temporis,* and although the pope was once given the realm of the Roman Empire he cannot claim lands which the pagans have peacefully acquired. Polish canonists repeated Innocent's doctrines with even greater conviction in regard to pagan lands which were never a part of the Roman Empire, a situation with which Victoria had to deal later.

In order to substantiate the opinion that the disposal of the lands of pagans was contrary to law Vladimirius developed a doctrine of national sovereignty based on the rights of nations and the principle of self-determination. Any governmental power on earth, states Vladimirius, is legal if it is derived from the institution by God or by the choice of the people. The king himself cannot transfer his state to another king because he is not its owner but only governs it.[28]

Victoria later restated this principle in terms closely reminiscent of Vladimirius' argument. It is illegal to establish a new regime for the indigenous population or new rulers for the Indian states without the agreement of the Indian princes or of the natives. Gentile repeated this doctrine in even more general terms.[29] Vladimirius, however, goes further than any of his successors in practical consequences. If pagans may have their states and may own property, it is

[28] *Lites,* III, p. 314. Ehrlich, *Wlodkowic,* p. 145, "Rex non est dominus bonorum et iurium regni sed administrator. . . . Quia non apparet de consensu civium sive incolarum qui consensus est necessarius ad hoc ut talis donacio teneat nam nec dominus civitatis potest ipsam civitatem alienare sine consensu populi."

[29] Gentilis, *De iure belli,* Book III, Ch. XV: "Finge igitur potestatem quantumvis liberam imperatori: ea est tamen non dominationis sed administrationis. . . . Non potest rex alienare populum, nec illi alium dare regem: quia populus est liber, licet sit sub rege, ut pupillus est liber, qui sub vi ac potestate tutoris est."

the duty of the pope to help the pagans to maintain and protect their states.[30]

The doctrines of the Polish canonists were unquestionably linked with the fact that the Polish king, though considering himself a member of the Christian community of nations, refused to recognize the supremacy of the emperor. The sovereign king, according to Stanislaus, has rights and powers in international relations equal to those of the emperor.[31] His country is not governed by the law of the Roman Empire. It was therefore necessary to find a different platform for the coexistence of various units of the free community of states, and natural law was the logical answer. It is only one step from this position to also including pagan states in the international community. It is interesting to note that the elements of Stanislaus' doctrine on the equality of Christian princes, including the emperor, came from the gloss of Guglielmus Redonensis (William of Rennes) (XIII century) to the *Summa Conscientiae* of Raymond de Peñafort. Redonensis also came from the country (France) which claimed the sovereignty and independence of the Roman emperor.[32] That this was not an accepted view and was a claim not universally recognized is seen from the even later fact that Lignano still maintained a different point of view.[33]

V

Vladimirius also formulates the rudiments of the mutual rights of Christians in pagan lands. Relations (*commercium*) between Christians and non-Christians and pagans are not restricted by any prohibition except that of marriage. It would not be legal to deny to Christians what is permitted by the law of human society.[34] Christians have the right to

[30] Ehrlich, *Wlodkowic,* p. 150.

[31] Sermon, para. 11.

[32] Ehrlich, *Polski Wyklad,* pp. 47, 100.

[33] See note 24.

[34] ". . . cum negari eis non debeat quod ius humanae societatis concedit." *SPPP,* Vol. V, p. 293 (Quoniam Error).

propagate faith in the dominions of the infidels, but even when an entire nation has accepted the Christian faith a pagan prince may remain its ruler if this does not constitute a danger to the faith or the faithful.[35]

With equal courage the Polish canonists solved the problem of alliances and military cooperation with infidels and pagans, which in the Polish case constituted one of the issues of the dispute with the Teutonic Order and one of the main arguments against Poland. It is dealt with in the works of Stanislaus and Vladimirius as well as in the anonymous *consilium Revocatur*. The question of military cooperation with infidels and Saracens was partially dealt with in the writings of two important jurists before the time of the Polish canonists. Oldradus de Ponte (died 1335) in his *Consilia* stated (No. 71) that it is permissible for Christians to use the assistance of infidels in self-defense.[36] His opinion was repeated without additions by Joannes Andreae (died 1348).

Vladimirius is less original than Stanislaus or the author of the *consilium Revocatur,* and repeats only the views of Oldradus and Joannes Andreae.[37] The *consilium Revocatur* and Stanislaus go much further and state the Polish doctrine in full. They assert that it is permissible under natural law for the Polish king to call infidels to his assistance and vice versa to assist pagans in their just wars against the Christians.[38] Stanislaus introduced a reservation that such an alliance is permissible only under conditions of absolute necessity. But this reservation Stanislaus repeats in connection with every aspect of war because the normal condition of the international community is peace and every resort to war is

[35] *Ibid.,* Vol. V, p. 169, para. XI.

[36] Oldradi Pontei Laudae iurisconsulti . . . . *Consilia.* See also Ehrlich, *Polski Wyklad,* pp. 33-34.

[37] *SPPP,* Vol. V, p. 292. Ehrlich, *Wlodkowic,* pp. 167-168.

[38] "Preterea evidens est, quod in bello iusto licitum est fidelibus iuvare infideles," Ehrlich, *Polski Wyklad,* p. 200.

conditioned by the fact that otherwise justice could not be achieved.[39]

Consilium "Revocatur" provides a general argument for amicable relations with all neighboring states, whether Christian or pagan. One must establish relations with everybody.[40] However, the relations between nations are reciprocal. Assistance from heretics should be claimed only on the basis of love (*caritas*) which is promoted by a similar reciprocal action.[41]

VI

Although it seems certain now that the origin of the canonist doctrines as regards the law of war must be sought in the views of the Romans (St. Isidore's borrowings from Cicero), the discussion of the problems of the law of war began in the third century with the question whether war is permissible at all in the light of the Christian doctrine. St. Augustine's reply in the affirmative started the discussion of a new set of problems. As only just war was permitted, it was necessary to determine its conditions. One of the answers was provided by St. Isidore who defined a war as just when it was authorized by a monarch, war fought for the recovery of what had been illegally removed, or war in self-defense.[42]

Theoretical studies of the law of war were given additional stimulus from the Lateran Council (1215), which introduced the general duty of confession. This originated a new kind of canonistic literature, in the form of the so-called *summa*

[39] Sermon, paras. 28, 29. See Ehrlich, *Polski Wyklad,* pp. 47, 128. The Polish doctrine was a revolutionary step forward, and even much later writers were not prepared to accept all the consequences of the coexistence of states of differing religions. Gentilis still considered all treaties with infidels as illegal, and alliances with them as prohibited. *De iure belli,* Book 3, Ch. XIX.

[40] Ehrlich, *Polski Wyklad,* p. 202. "Et ideo certo modo cum omnibus mos gerendus est." Cf. *ibid.,* p. 40.

[41] *Ibid.,* p. 201, para. 11.

[42] Ehrlich, *Polski Wyklad,* pp. 54-55, 57. The definition coined by St. Isidore was incorporated into the *Decretum Gratiani,* Book I, c. 1, c. 23.

poenitentiae, which were manuals for the confessors and, among other sins, defined various practices in connection with the war as permissible or prohibited.

One of the most famous, and also the most popular *summa poenitentiae* in Poland was that prepared by Raymond de Peñafort (1240). In the fifteenth century, a course on this *summa* was given at the *Academia Cracoviensis.* For a long time it constituted the most detailed treatise of the law of war and its five conditions determining cases of a just war were generally considered as authoritative. Later Raymond's *summa* was expanded in a gloss by Guglielmus Redonensis, which added new questions and answers to those of Raymond. Raymond's formulation enjoyed such authority that, although Polish canonists were familiar with the views of more important canonists, they adopted the views of his *summa* as basic.[43]

Five conditions of a just war pertain to the person (fighting was prohibited to ecclesiastics): the cause, the impossibility of obtaining satisfaction by peaceful means, the object of war, the authority (if authorized by a king or an emperor), and the spirit in which it was undertaken.[44]

The common character of the works constituting the source of legal precepts for these canonists, which included the writings of the most important theologians and jurists, was their confessional character. All questions of war were treated from the angle of responsibility, that of a monarch or that of a knight in the court of conscience (*forum conscientiae*).

For the first time the law of war was restated in terms of practical temporal aims by the Polish canonists. Their purpose was identical with that of Victoria, Gentile and Grotius, i.e. to regulate the conduct of war, to prohibit it in certain cases, and to mitigate its effects.

There is no doubt in the mind of the Polish canonists that war is permissible and therefore just under certain circum-

[43] Raymond de Peñafort, *Summa poenitentiae* (1240).

[44] Sermon, paras. 4-12. Ehrlich, *Polski Wyklad,* pp. 95-105.

stances, either in order to preserve peace or to enforce violated rights. A most obvious example of a just war is one waged for the right of self defense.[45]

In the beginning of the fifteenth century when our canonists were active there was no doubt about the admissibility of war within those limits, and here they have added nothing to the generally prevailing opinion. The merit of Stanislaus and Vladimirius on this point consists in the fact that they restated this general principle in terms which turned it into a part of a system of rules governing relations between nations. In the first place, Polish canonists have demonstrated its bearing on relations with pagan states. In the second, they were concerned exclusively with public war, and, thirdly, they combined the consideration of conditions of a just war which they understood as a means of enforcing rights, with the consideration of the peaceful settlement of international disputes.

All aggression, according to Stanislaus, is a prohibited act. It is a crime to attack an individual, but it is an even greater crime to attack a country.[46] However, a sovereign prince may start a war for a justified reason. Following Redonensis, Stanislaus states that a sovereign king needs no authority (for instance from the pope) to resort to war, even against the emperor.[47] Undoubtedly, according to Stanislaus, the pope has the right to authorize a war, but this right is subject to the same limitations as that of the sovereign ruler, and the pope cannot legally authorize a war without a just cause.[48]

All others may start a justifiable war only when exercising

[45] "Potest eciam quis pro rebus repetendis et defensione patriae sine auctoritate principis vel auctoritate ecclesie bellum movere. . . . Eo quod cuilibet licet de iure naturali vim vi in continenti repellere cum moderamine inculpate tutele." Sermon, para. 12. Cf. Ehrlich, *Wlodkowic,* p. 143.

[46] Ehrlich, *Polski Wyklad,* p. 49. Stanislaus uses the following expressions: policia, regnum, principatus, commune.

[47] Sermon, para. 38. See Ehrlich, *Polski Wyklad,* pp. 47-48.

[48] Sermon, para. 40: "Patet eciam ulterius, quod non licet pape vel fidelibus auffere dominia sive iurisdictiones infidelibus, quia sine peccato ea possident et de iure."

the natural right of self defense, or after having obtained the proper authority from the ruler. That Stanislaus is not yet ready to prohibit private war altogether seems to be indicated by a reference to situations in which other than a monarch or a republic may resort to a just war. Stanislaus repeats the statement of St. Augustine (after St. Thomas) in regard to the authorization by a prince or judge.[49] In another place, Stanislaus says that a prince or a Catholic knight may not resort to war against his own subjects so long as they are willing to appear before him or before a judge who has jurisdiction in the case.[50]

However, it is obvious from the context of the sermon that the matter of private wars was a marginal problem to Stanislaus. His main interest was to demonstrate that pagans have the right to exercise the right of self defense against Christians, and that the Polish king could, under general rule, make a legal decision to resort to war and that he was equal in this respect to any other member of the community of nations, not excluding the emperor.

It would have been premature, at the time of our canonists, to define war as a conflict between the armed forces of sovereign states. When Victoria formulated a definite prohibition of private wars, he still permitted, within the terms of the law of war the self-defense of private persons, and drew no distinction between self-defense in this sense and a war properly declared by a sovereign prince, which position did not differ much from the doctrines of the Polish canonists. The next step was made by Gentile, who considered as war only an armed conflict between states. But even Grotius was inclined to recognize the fact that private wars are legitimate and possible, and in his *De iure predae* defended the exercise of the rights of a belligerent by a Dutch India Company.

[49] Sermon, para. 1.

[50] *Ibid.*, para. 11.

VII

In the Polish doctrine of the law of war the right to resort to war is closely linked with the duty to exhaust all methods of peaceful settlement of international disputes. In this respect Polish canonists follow Redonensis, the eminent glossator of Raymond de Peñafort, who prohibited resort to war whenever the opponent offered to submit to a peaceful settlement of a dispute.[51] From this statement Polish canonists build a complete theory of pacific settlement of international disputes and gave it a central place in their system of the law of war.

The importance of the doctrine of the peaceful settlement of international disputes is due in the first place to the fact that Polish canonists denied to both the pope and the emperor any specific rights not possessed by a sovereign king or a republic in regard to the right to wage a just war. Peaceful settlement of disputes by a judicial or arbitral decision was designed in the Polish doctrine to take the place of a settlement by imperial or ecclesiastic authority representing the centralized Christian community of nations. This new concept in the Polish doctrine was also directly linked with the rights accorded to pagans and their states. Neither the pope nor the emperor could claim any special rights in relations with them, nor could the law of the Church or the empire apply.

The duty to submit international disputes to peaceful settlement is based on natural law. As Stanislaus formulated it, even the wronged side has no right to resort to war if the other side offers to submit to an arbitral decision.[52] Vladimirius asserts that the right to go to court is based on natural law (*Quoniam error,* 1417) and all authorization to go to war contrary to it is illegal per se. This defense of rights in court

[51] See Gloss Redonensis in Ehrlich, *Polski Wyklad,* pp. 101-102.

[52] "Peccaret tamen bellum movens eciam iniuriam passus, si iniurator ei satisfactionem ad arbitrium bonorum virorum offerat sine strepitu iudiciorum de plano." Sermon, para. 11.

is another form of the right to self-defense.[53] But, what is even more important, he states that no rights of nations, even pagan nations, may be affected by any but a judicial decision, which must be issued only after certain formalities prescribed by law are observed. Pagans cannot be deprived of their states without due process of law, certainly not by an imperial or papal decision, and without a proper examination of the case, because: "To deprive anybody of his possessions is a great punishment and it would be contrary to natural law to impose it unless he is guilty, or at least for a just reason (*causam*) and in particular without strict observance of a legal rule, or without a previous examination of the case." [54]

VIII

A just war must be fought according to certain rules designed to mitigate the effects of hostilities in order to remain just. Stanislaus lays the foundations for a system of rules which Grotius later termed "*temperamenta belli,*" leading finally to a number of treaty rules adopted in the course of the nineteenth and twentieth centuries to reduce the horrors of war, both for the members of the fighting forces and the civilian populations.

In an effort to state the case briefly Stanislaus formulates his *temperamenta belli* in a general manner: war must be waged with proper care (*cum moderamine inculpatae tutelae*) and only such methods of war shall be permitted which cannot be avoided, as otherwise the ultimate purpose of a war cannot be achieved (*necessitate inevitabili*).[55]

A war, insists Stanislaus, must be fought in good faith, and all acts of war must be undertaken with the conviction that they lead directly to victory and to the reestablishment of peace.[56] According to him in a just war a monarch is not re-

[53] *Quoniam error* (1417), "defensio est de iure naturali," Ehrlich, *Wlodkowic,* p. 144.

[54] *Ibid.,* p. 144. Cf. Victoria, *De Indis,* Sect. I.

[55] Sermon, paras. 13, 15, 28, 47.

[56] "Se vero rectum animum bellandi habebat. . . ." Sermon, para. 44.

sponsible for damages if they are caused in good faith and could not be avoided.[57]

IX

The definition of the aims of a just war was borrowed by Stanislaus from another Polish canonist, Martinus Polonus.[58] War is permissible, according to Stanislaus, in order to prevent injustice or to render justice.[59] But in a phrase from the *Margarita Decreti* of Polonus he introduced a significant change. Instead of "justice" Polonus used the word "punishment."[60] That this modification was intended and expressed a novel approach to relations between sovereign nations seems indicated by another sentence of Stanislaus' in which he speaks of reparations, stating that their aim is to repair the damage caused by aggression.[61] According to Stanislaus a wrongdoer is responsible for all damages caused to an aggrieved party and his subjects, and to his own subjects for all damages caused by himself and by his opponent. But nowhere does Stanislaus permit the imposition of punitive damages.

In contrast to Stanislaus, Victoria was not prepared to recognize the principle of the equality of states and nations to the same extent and was, perhaps more realistically, still bound by the opinions of earlier writers. A monarch waging a

[57] ". . . que bona fide intulit, a quibus secundum industriam et bonam fidem not potuit abstinere. . . ." Sermon, para. 16.

[58] ". . . Potest eciam iustum esse bellum intuitu eius. . . . Unde si deordinatum quis habebat animum, eciam in bello licito, intencio sua mala facit sibi bellum iniustum." Sermon, para. 43.

[59] ". . . propter iniuriam propulsandam vel iusticiam exequendam. . . ." Sermon, para. 43. Ehrlich, *Polski Wyklad,* pp. 61, 141, 190.

[60] *Margarita Decreti,* 23.q.t. Cum homo. "Quod iustum bellum dicitur intuitu eius propter quod fit, puta propter iniuriam propulsandam vel vindictam inferendam."

[61] Sermon, para. 17. "Oportet siquidem omnem obliquitatem ad equalitatem et omne dampnum iniuste illatum resarciri. . . ."

just war must act as if he were a judge,[62] and consequently the purpose of the war may be the imposition of punishment.[63]

X

The significance of the Polish doctrine must be gauged by two measures of time. One, how do the views of Polish canonists compare with those of their contemporaries? The other, what is their place in the development of the ideas which constitute the modern law of nations?

The deciding factor in the formation of the Polish doctrines was the fact that the world which the Polish canonists were observing looked, in terms of problems of international law, very much like the world of Victoria or Grotius. Stanislaus and Vladimirius were keenly aware of the fact that the international community was expanding its boundaries and changing character, and that in this connection the position of the papacy and of the Roman king as heads of the *communitas Christiana* required redefinition with reference to the world which was spreading beyond its confines. At the same time, Stanislaus and Vladimirius were no revolutionaries and were conscious that they had predecessors among the great minds of the thirteenth century canonists and that they could build on foundations which dated back at least to St. Augustine.

In terms of contribution to the development of the central ideas of the modern law of nations the Polish doctrine may be best appraised if compared with the doctrines of the sixteenth century Victoria who covered the same ground as the Polish canonists, in circumstances almost identical with those which confronted them at the beginning of the fifteenth century.

The central fact which necessitated, in Victoria's mind, the reformulation of contemporary international law was that the old community of nations had again expanded and in the new

[62] "Princeps qui gerit iustum bellum, habet se in causa belli tamquam iudex. . . ." Victoria, *De iure belli*, para. 17.

[63] Victoria sanctions depriving a defeated enemy of a part of his territory as punishment "nomine poene, hoc est in vindictam." Victoria, *De iure belli*, para. 56.

situation neither imperial nor papal authority was enough to provide the rule of law. He was convinced that Indian princes and nations had rights based on a legal system wider than the law governing the relations between Christian states. Victoria and the Polish canonists drew from the same sources, which in the case of Victoria were enriched by the ancient writers and later literature. Victoria's treatment of the right of self-defense, of the limitations of the methods of waging war, of the argumentation concerning the rights of pagans to have their states, and his doctrine of the self-determination of nations were highly reminiscent of the Polish doctrines. Victoria and the Poles were identical in their concept of the law of nations (*ius gentium*), which was for them a branch of natural law, a consequence of the application of reason to the relations between nations.

Neither the work of Gentile nor that of Grotius differs fundamentally from the works of their predecessors. They make extensive use of Victoria's lectures (Grotius refers to 50 of Victoria's 60 paragraphs). Their sources differ little in character from those used by the Poles or Victoria. Gentile and Grotius admit no sanction for a violation of the rule of law but the religious one.[64] Both, although Protestants, belong to the canonistic school of international law because they could write a full system of contemporary international law only with reference to the ideas and concepts developed by the canonistic school.

[64] Grotius, *De iure belli* . . . , Book III, Chapter X, para. 3. "Primum ergo dicimus, si belli causa iniusta sit, etiam si bellum solenni modo susceptum sit, iniustos esse interna iniustitia omnes actus qui inde nascuntur: ita ut qui scientes tales actus operantur aut ad eos cooperantur, habendi sint in eorum numero, qui ad regnum caeleste sine poenitentia pervenire non possunt. . . ."

Ibid., Prolegomena, para. 20. "Neque tamen quamvis a vi destitutum ius omne caret effectu. Nam justitia securitatem affert conscientiae, injustitia tormenta ac laniatus, quales in tyrannorum pectoribus describit Plato. Justitiam probat, injustitiam damnat proborum consensus. Quod vere maximum est, haec Deum inimicum, illa faventem habet, qui iudicia sua ita post hanc vitam reservat, ut saepe eorum vim etiam in hac. See *ibid.*, Book III, final para.

It is difficult to detect any fundamental difference between the work of Grotius and those of his predecessors in regard to the scope of the discipline. In spite of its title Grotius' *De iure belli ac pacis* is fundamentally a study of the law of war. For Grotius and his forerunners war was the issue which required solution.

The most important objection against the periodization which separates Grotius from the theoretical tendency to which he belongs lies in the realm of method. It seems doubtful whether it is valid to introduce the periodization of the growth of the science of international law according to the range of subjects dealt with by one or a group of authors. Criteria of periodization or classification belong to a different category. It is suggested that the two following would perhaps be the most important and effective: one criterion making it possible to distinguish between one tendency or school and another is the source from which it draws the rules of international law; the other consists in the consequences which, according to it, follow the violation of the rule of law.

For a long time the minds of scholars of international law were dominated by what may be called the explosion theory of the origins of international law. Some were inclined to give full credit to Grotius' complaints about the scarcity of writers who considered problems of international law before him.[65] Others were convinced by Gentile's rejection of theological meddling in a province which, according to him, was within the exclusive compass of juristic thinking.[66] For a time there reigned undisputed an attractive theory which linked the sudden formulation (by Grotius) of the system of international law with the transition of the international community from a system of states bound together by religion and subordination to Rome to a system of states in which reformation destroyed these two linking elements. Only then, it was argued, with the coming to life of the modern com-

[65] Grotius, *De iure, Prolegomena,* para. 38.

[66] Gentilis, *De iure,* Book I, ch. XII. "Silete theologi in munere alieno."

munity of nations did the need for a real international law arise.[67]

How strong was the hold of this theory on the minds of scholars is indicated by the case of Ernest Nys. . He was perhaps the first to see clearly the real role played by Grotius in the history of the science of international law. However, even he was inclined to maintain that theory, albeit in a modified form. He described the role of Grotius as the founder of the discipline, who brought together its already existing elements and breathed life into them.

In time the priority of the Spanish school of international law was established, but also in a new formulation of the theory of explosion. It is suggested that the studies of present day Polish scholars have opened a new vista in the historical aspects of the science of international law. Its central ideas and concepts were formulated in a long historical process, and as new studies appear a careful analysis of the texts is made, the progress of ideas is traced from author to author, and new elements dating from an even more remote past are brought in to modify our understanding of how international law as a separate discipline has come into existence.

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[67] A typical example of that firm conviction as to the origins of international law was Arthur Nussbaum's intemperate attack on James Brown Scott in connection with his work on the Spanish contribution to the development of international law.

THE CONSTITUTIONS OF RELIGIOUS INSTITUTES AND MODERN TRENDS*

Part III—Modern Trends

THE book of the Constitutions is generally small in size, but its contents make it a mighty bulwark of spiritual strength. Modern trends cannot change it. Trends may be ugly and deadly, but the conflict or mere contact of Constitutions and trends must be a source of new and renewed spiritual life and of unparalleled happiness in the Heart of Christ. But not all trends are ugly or deadly. Some are as beautiful as the blue heavens above; some as joyful as the life of God in the heart of a child on Christmas night.

Religious have an urgent duty to study and live their Constitutions in the context of present tendencies and needs. But it is not wise to attach to trends and fads an importance they do not have. Fashions are ephemeral for they touch only the surface, the outside of things. None is more interested in fashions than women, and perhaps none changes less as to the things within, for women have a psychology with strong tendency to cherish what is intimate and interior.

The solution to the conflicts between the Constitutions and trends must be found more in the vitality of the Constitutions themselves than in the analysis and diagnosis of modern trends. But this is an age of criticism; the psychology of the contemporary man leads him to discuss everything. Since there is no harm in that, and the benefits can be great, it will be useful to dedicate a few pages to a study of trends. "The Apostolic See invites all to study modern problems which

*This study was prepared for the Reverend Mothers General meeting at the Dominican College in San Rafael, California, January 10, 1958, as an outline and guide for a series of conferences on the constitutions of religious institutes. Part III is the concluding section of this study. Parts I and II appeared in the issues of April and July 1958, respectively.

must be submitted to a new and more accurate analysis and solution." [203]

The method to be followed in the third part of this study was suggested by Pope Pius XII in the admonitions (*monita*) which he prepared for the first issue of *Divinitas*. He says: "The Church, equipped with the truth of Christ and of the Holy Spirit, keeps its hand on the pulse of the present times, and the faithful must keep their hand on the pulse of the Church in order to be rightly orientated, and in order to be able to find the correct diagnosis of the times in reference to eternity." (p. 9.) There is no better way to detect modern trends than to turn to the statements of the Holy Father. He plainly tells the whole world the tendencies of our age, and prescribes the best remedy for every evil. Cardinal Ottaviani also warns: "Take sides with the word of God, and take it from the Church that gives it eternally to men." [204]

A sincere examination of conscience, at least of Christian conscience, in the middle of the twentieth century will uncover some fine trends and some not so fine.[205]

A Greater Participation

Spiritual life today seeks in every apostolic effort a participation in the human drama. This is not an indictment of the past nor praise of the present. The past was never without the apostolic zeal in the souls of the saints, nor are the saints of today excused from lovingly meditating and perpetually contemplating the eternal problems and truths that constitute the very heart of the spiritual life. Yet today the apostolic preoccupation forms an organic part of the spiritual life; there is a greater consciousness of the need of unity. The best souls feel very deeply the urge experienced by the great saints in all epochs: "The charity of Christ urgeth us,"

[203] *Divinitas*, I (Lateran University, 1957), Preface.

[204] *Divinitas*, I (1957), 17.

[205] Cf. Chevignard, "Examen de Conscience du Milieu du Siècle," *La Vie Spirituelle*, XCVII (July, 1957), 43 ss.

(motto of St. Anthony Claret, † 1870), as an experience which forms an integral part of their spiritual life. The youth of today are suspicious of any type of spirituality that does not bring them into contact with others, and better yet into some important role in the human drama, not only in its personal dimension, but also in its collective development.

The saints have always been great realists, far removed from the illusions of spiritual abstractions. But our age demands more pressingly, perhaps with greater realism, a spiritual life that knows how to face the human problems and how to find a solution for them. Religious vocation is not to seek temporal engagements, but religious are bound to accept human and apostolic responsibilities.

The encyclical letter *Mystical Body* of Pope Pius XII [206] thoroughly explains the doctrine of human unity in Christ which responds so well to the reawakening of the consciousness of organized participation in human life as a characteristic of men according to the plan of God, especially manifested by Jesus Christ and explained after the Last Supper: "That all may be one, even as thou, Father, in me and I in thee. I in them and thou in me." (John, 17: 21, 23)

"Exclusive consideration of the Church's social activity inevitably creates uneasiness. This activity is not an end in itself—either in general or in the Church—for the community is ultimately at the service of the individual, and not vice versa." [207]

The Constitutions direct the social life of religious Institutes and determine the entire structure of the community's external activity.[208] There is no religious life without common life, (Canon 487), and no common life without rules.[209] Now the main purpose of the common life in religion is to achieve

[206] *AAS*, XXXV (1943), p. 193.

[207] Pope Pius XII, Address to the Second World Congress for the Lay Apostolate, in *The Pope Speaks* (Autumn, 1957), p. 122, column 2.

[208] Quatember, *Renovation of Common Life*, in *Acta et Documenta*, I, 239.

[209] Basset, *Renovation of Common Life* in *Acta et Documenta*, I, 208.

the union of souls through the bond of each one's love for the common good and thus visibly to express the social love and unity of the Church.[210] In the mind of St. Augustine, the purpose of people in coming together in the religious life, is "that you have but one spirit and one heart in God."[211] The Constitutions tell how to be one in mind and heart, how to seek not one's own interests but the interests of Christ.

The basic theological contents of the Constitutions, the large number of norms taken from the canons of the Church, and the intervention of the Holy See in their approval clearly point out that the common good which is the precious goal of common life is not precisely the good of the convent or of the institute to which one belongs, but the good of the Mystical Body of Christ, the Church. Religious choose to live the common life in order to be free and ready to dedicate themselves to promote the good of the Church. By profession a religious belongs to one institute; by love and affection he belongs to the Church. A religious loves not precisely the good of the institute in the Church, but the good of the Church in the institute. Love is greater the more universal is the good one loves. St. Augustine said with strong words: "Those for whom God and the Church are not good enough, let them go their way."[212] There is no room for them in the convent.

Superiors must urge the faithful observance of those prescriptions of the Constitutions which promote common life, not only in the formal sense, i.e. obedience to a superior and incorporation to an Institute, but also in the material sense, living together, i.e. receiving from the community what is needed in food and clothing, and praying together. Charity and the good of the Church do not ask that common life be relaxed; it would be rather harmful to the Church. When

210 Trape, *Renovation of Common Life* in *Acta et Documenta*, I, 246.

211 *Regula ad Servos Dei*, chapter 1, n. 2 in Migne, *Sancti Augustini Opera Omnia*, P. L., vol. XXXII (Paris, 1877), column 1378.

212 Sermo 355, 6 in Migne, *op. cit.*, vol. XXXIX (Paris, 1865), column 1572.

religious are completely absorbed by exterior works, the Church loses the precious jewel of common life. Pope Pius XII advised on this point that "The *'consecratio mundi'* is essentially the work of laymen themselves, of men who are intimately a part of economic and social life and who participate in the government and in legislative assemblies. In the same way, only the workers themselves can establish the Catholic cells which must be created among workers in every factory and bring back to the Church those who have strayed from her." [213]

The world is in a state of cold war, and perhaps many religious communities are in the state of cold peace. Christ came into this world to establish a kingdom of love. The Church today delights in that many religious Institutes blossom as the ripe fruit of the divine and fraternal love she received from Christ her Spouse as wedding gift. The practice of the exterior life of perfection is possible only in a community of love; this is so true that for men there is no other perfection but the perfection of the Mystical Body of Christ. Religious families are the glory of Christ and of the Church of charity, in the union brought about externally by the Church of law.

It is a very strange thing that some theologians have represented religious Institutes as being outside the hierarchy of the Church, and that others have seen in the canonical laws for religious accidental regulations of transitory value and even an obstacle that should be removed in order to expedite one in the pursuit of perfection establishing a more free type of consecration to God. The contrary is true; religious Institutes are the only cells of the Mystical Body in which by profession Christ and the Church have fully united the children of God to the glory of the evangelical charity.[214]

True, indeed, Church law is never an end in itself. It is the means to an end. Like everything else in the Church, law is

[213] Address to the Second World Congress for the Lay Apostolate, in *The Pope Speaks* (Autumn, 1957), p. 123.

[214] Cf. *Allocutio Pii P. XII* in *Acta et Documenta,* IV (1950), 307.

at the service of souls and is therefore a matter of pastoral care. But as the Holy Father remarked, "this does not mean that [the law] is an external adjunct to the inner structure and nature of the Church or merely the work of men." [215] More recently the Holy Father has once again emphatically defended the external yoke of religious discipline as a means better to achieve the ends of the religious life. He said: "May whosoever tries to destroy religious discipline with the empty and abused name of 'formalism' know that he is going against the will and consent of the Apostolic See, and that he is deceiving himself if he appeals to the laws of charity to uphold a false freedom, dragged from the bonds of obedience. What, in fact, would this charity be if it ignored the will of Christ Our Lord which that same man has undertaken to fulfill in the religious life? That severe discipline which was the pride and strength of your Order will still hold you today ready at all times for the battles of the Lord and for the apostolate which is called modern." [216]

In the midst of so much dissension and misunderstanding among the nations, there is nothing more necessary today than the apostolic warmth and the bright and cheerful light of religious Institutes. But it is even more necessary that religious communities have charity and love as their supreme rule. Religious must rise above all private interests and legitimate ambitions for one's community, parish or diocese. The goal on earth is the kingdom of Christ, the Mystical Body, the Church. In the Church one finds the most perfect realization on earth of community life. As Cardinal Ottaviani said, "our efforts to free ourselves from error must be achieved by truth and goodness." [217] This is an imitation of God in Whom the fulness of life consists in sharing the divinity with the Word, the eternal Truth, and with the Holy Spirit, the eternal Love of God.

[215] Address to the Faculty and Students of the University of Vienna Law School in *The Pope Speaks* (Autumn, 1956), p. 175.

[216] *AAS*, XLIX (1957), 808.

[217] *Divinitas*, I (1957), 17.

Toward the Unlimited

Another good trend today is universality. There is nothing in the world more universal than Jesus Christ, and next to Him the saints. Every Christian generation is a witness to the perennial universality of Christian spiritual life. Perhaps the very conflicts which harass contemporary society are eloquent symptoms of a pronounced trend towards a greater universality. And if the world obtains before the eyes of men new gigantic dimensions through historical research and the physical sciences, there must be a call to a spiritual life able to fill up all the dimensions and newly discovered realities in the world. If man dares break the barriers of sound and heat, and his mind aspires to break the outer barriers of time and space, his heart raised to the supernatural order craves for the breaking of all the barriers of creation to embrace and possess the uncreated God. Christian demands place Jesus Christ in every part of the vast created world, and Jesus Christ takes the created world of men into a communion of truth and love with the Father.

The Constitutions take the key to universality from the Church and give it to every religious as his highest goal. The end of every Institute is the glory of God. Sanctification of its members and the salvation of the souls of others is, theologically speaking, only the means to the glory of God. It is a sacred duty in regard to the Constitutions to maintain the hierarchy of ends. The Constitutions as a rule do not indicate expressly the order of ends and goals to be achieved by their various prescriptions. Their organic arrangement, however, suggests the relative importance of each rule, taking into consideration its theological, moral, and juridical content.

Man achieves universality best when he takes his place close to God. God's viewpoint is universal; limitations proceed from the creature. A religious who takes his own point of view of the entire structure of the Constitutions will be necessarily limited by his own personal limitations. One with a finer personality and ability to detect the vital energy

captured in every law of the Constitutions will have a more extensive perspective, but still limited by his human boundaries firmly established by his own will and knowledge and affective life. The Constitutions when interpreted in the light of those factors are not and cannot be universal. One needs to occupy the unique point of vantage God has, to be able to contemplate and rejoice in the unlimited beauty and vitality of the Constitutions.

Narrow views are the plague of wide goals. When a religious has achieved in himself the theological, juridical, and moral universality contained in the Constitutions, he will be free from the restrictions of place, time and peoples; he will be indeed a man of God. That is what religious consecration is meant to achieve, in the manner and measure determined by the Constitutions. The life of consecration, especially when lived in an Institute, develops and grows up in proportion to the faithfulness in the observance of the Constitutions.[218]

Biblical Background

One other good trend of Christian society is a return to the study of the Sacred Scriptures by more people than ever before. Catholics today seek, as in the most flourishing periods in the history of the Church, their inspiration and spiritual nourishment in both the seven Sacraments and the revealed word of God. The revival of scholarly and popular interest in the Bible is obvious, and this trend is highly beneficial, for it brings along a unique truth, vigor, and simplicity which are proper of the things of God.

Constitutions which are not interpreted as a detailed description of the evangelical life as lived in Palestine many centuries ago will be devoid of the odor of Christ, of the wisdom of the Word of God made flesh, and of the saving power of the Redeemer. The code of the religious life must

[218] Gabriel of St. Mary Magdalene, *La Vita Interiore* in *Acta et Documenta*, I, 137.

capture the air proper to the life of the evangelical counsels. In that sense it was affirmed above that the Constitutions are for a religious like a bible. He must live in the biblical spirit each one of the norms of the Constitutions, if a religious is going to find in them the refreshing waters Christ promised the Samaritan woman by Jacob's well.

The Constitutions must bear out that the most fundamental element of the religious life is the "unconditional imitation of Jesus Christ." [219] The three evangelical counsels are given to men in order that they may establish their entire life on a new basis, the renunciation of whatever might be an obstacle to the friendship and imitation of Christ. The imitation of Christ consists first of all in sharing His way of thinking, in adopting His criteria, and in making one's own the feelings of Christ. To practice the evangelical counsels means to become familiar with Jesus Christ.[220] It is particularly in the chapters on the vows that the Constitutions must capture the flavor of Christ's life, the evangelical vigor and the biblical presence of the divine.

Superiors will do well to think that young religious need to be introduced to the Sacred Scriptures. Prayerful reading of the word of God will enrich their minds and wills for their life besides introducing into their affective lives the sanity of Christ. "The inexhaustible fountains of the Sacred Books," said Pope Pius XII, "especially those of the New Testament, create in men the genuine spirit of Jesus Christ." [221] The wisest recommendations on this point can be found in the great biblical encyclicals. The book of St. Basil the Great on ascetical theology teaches that by the learning of the Sacred Scriptures one can find an efficacious means to foster piety

[219] Carpentier, *Fondement Ascetico-Theologique de la Profession des Conseils Evangeliques* in *Acta de Documenta*, I, 161. Cf. St. Thomas, *Summa Theologica*, 2, 2, p. 186, a. 2.

[220] Olphe-Galliard, *Les Fondements Theologiques et Ascetiques de la Profession Religieuse* in *Acta et Documenta*, I, 187.

[221] *AAS*, XXXI (1939), 249.

and to hold religious back from becoming accustomed to merely human traditions.[222]

No general prescription to read the Sacred Scriptures is found in the Code of Canon Law or in any other ecclesiastical law. The Constitutions do not always prescribe the reading of the Bible, and practices vary widely in the various religious Institutes. During the International Congress of Religious in Rome, 1950, Malo made a motion asking the Holy See to pass a law ordering all religious communities to foster the reading of the Sacred Scriptures in the manner and amount corresponding to the proper end of each Institute.[223] The liturgico-biblical training introduced among the laity would seem to require that the young religious be also given a similar training of the type expected from people dedicated to God in the religious life. The Cardinals and Archbishops of France made that recommendation to the Reverend Mothers General of their country in 1948.[224] There is a magnificent study about how the reading of the Gospels will serve to create in the mind and heart of the young religious a climate truly evangelical regarding the vow and virtue of poverty written by Middendorf,[225] which should be highly recommended. It can serve as an orientation for similar studies on the other two general evangelical counsels.

In the final analysis, the main reason for a good biblical, especially evangelical, background in the training of religious is this: The renovation of the life of perfection must seek its ultimate reason and norm, not in the circumstances of our times, not in the circumstances of contemporary trends, not even in the human founders of Institutes, but in " the foundation no one can lay, but that which has been laid, which is Christ Jesus." (I Cor. 3:11)

222 Translation by Leggio (Torino, 1934), p. 99.

223 Cf. *Renovation of the Spiritual Means for Perfection in Acta et Documenta,* II, 226.

224 Cf. *La Vie Spirituelle, Supplement,* n. 10, August 15, 1949, p. 221.

225 *Paupertas Christi* in *Acta et Documenta,* I, 390-409.

Liturgical Movement

The trend towards liturgical revival is so obvious that it is perhaps the most pronounced movement among the laity as well as among the clergy. This trend or movement is often connected with a more extensive use and study of the Sacred Scriptures, and thus it is called a liturgico-biblical movement. As Pope Pius XII said, "The liturgical movement is thus shown forth as a sign of the providential dispositions of God for the present time." [226] "The liturgy confers on the life of the Church, and even on the whole religious attitude of today, a characteristic mark." [227]

Two important aspects of the liturgical movement can be considered here: its spiritual meaning for the religious and the recitation of the office. Constitutions generally say little or nothing about the first point, but are explicit on the second.

The encyclical letter *Mediator Dei* of Pope Pius XII [228] has revived the entire liturgical life and will always be a classic source of information on the liturgy. The offering of and the participation in the Eucharistic sacrifice is the center of all the liturgy and should also be the center of all renovation in the religious life. "It is in the heart of the liturgy that the celebration of the Eucharist, sacrifice and banquet, is accomplished." [229]

The Constitutions are the external means to promote the efforts in the striving after perfection; they are an expression of the demands of the religious state to tend to a continuous growth in divine life. The Eucharist is the bread and the nourishment of the supernatural and eternal life. Its sacra-

[226] *Allocution* to the Liturgical Congress in *The Assisi Papers* (Collegeville, 1957), p. 224.

[227] *Ibidem*, p. 236.

[228] *AAS*, XXXIX (1947), 522.

[229] Pius XII, *The Assisi Papers*, p. 225; cf. Dreier, *Eucharistische Neubelebung* in *Acta et Documenta*, II, 110.

mental grace is to nourish and strengthen, says St. Thomas.[230]

Religious life, as orientated and regulated by the Constitutions, is a state of immolation and sacrifice. The Eucharist is a sacrifice a thousand times renewed; the communion of a religious must be the union of a host with a Host. "The life of Christ," said Pius XII, "is governed completely by the sacrifice of the Cross." [231]

Religious life is common life, a life of union of hearts and souls. The Eucharist is the bond and center of the Christian community.[232]

Holiness, the goal of the Constitutions, consists in man's transformation in God. Sanctifying grace operates this transformation from the most spiritual part of our being, where the contact of the human with the divine takes place. From these heights of man's soul God beings the conquest of his entire being, moving from the spiritual faculties to the lower ones, and through those to the corporal faculties and senses. This is a long and laborious task. But God did not want to have to wait so long to possess man, and so He instituted a sacrament that would help conquer man from every side: through man's spirit, taking possession of it by the divine indwelling, and through man's body to which He is united by the sacramental presence, thus giving man's flesh a contact with the divine.[233] A eucharistic life which consists in the sharing of sacrificial communion and the communion of the sacrament makes the specific means of sanctification proper to the religious state more efficacious. Theologians teach [234] that the sacramental grace of the Eucharist, that is ordered to the nourishment of the soul, fulfills its end according to the characteristics of the person who receives It. A religious lives the supernatural life and increases it through the observance

[230] 3, q. 79, a. 1.

[231] *The Assisi Papers*, p. 231.

[232] Cf. Tabera, *La Eucaristia en la Vida religiosa* (Madrid, 1953), p. 9.

[233] Cf. Juberias, *La Eucaristia en la Vida Religiosa*, p. 28.

[234] Cf. A. Peinador, *La Eucaristia en la Vida Religiosa*, p. 47.

of the evangelical counsels as directed by the Constitutions. Therefore, in him, the spiritual food that he receives in the Eucharist cannot be anything else but grace exercising its influence over his faculties in order to make him more perfect and transforming the vows and their corresponding virtues.

The religious state is a state of perfection. Now perfection is charity. Therefore, that sacrament which is the sacrament of charity is the sacrament of the religious state. There is nothing strange then in the fact that usually religious profession is made in intimate relation to the Eucharist, after Mass or after Communion. The Claretians, following in the footsteps of their Founder, a saint of the Eucharist, express it this way: ". . . humbly prostrate . . . before Jesus Christ, true God and true man, Who is truly and really present in the most holy sacrament of the altar, and Whom I carry now in my breast" (Formula of Profession). Religious life springs from the fountain of the Eucharist, and it is natural that it be marked with the sign of the Eucharist.

The vows are a sacrificial death to self and to the world and a complete consecration to the divine service, just like Christ the victim of sacrifice offered to the Father.

Recitation of the Office

Regarding the recitation of the office, no issue will be taken regarding the different opinions that evaluate its liturgical implications. Only the possible canonical or juridical consequences will be stated and settled here. The problem touches the Constitutions in their juridical aspect whenever it implies a change which might be above the authority of the superiors of the Institute to make. The liturgical merits of the case are not considered here.

From the exclusive point of view of a canonist, the writer now refers to a commentary signed *The Editor,* which appeared in *Worship.*[235] There three articles, dealing with short

[235] XXIX (1955), 110-113.

breviaries, are said to stand out in importance, because of the authority of the authors as well as of the magazines in which they appeared. The first article mentioned was written by Gutierrez, editor of *CpR;* the other two are based on quotations from Gutierrez' article; therefore it seems permissible to omit any reference to these. The point to stress here is that the quotations from the Gutierrez article seem to produce an impression opposed to the original. For the sake of information, a summary of the main ideas of Gutierrez, taken from the original Latin text of his article in *CpR,* will be submitted. No controversy is intended by the present writer.

For the purpose of promoting the liturgical spirit among the laity and women religious, some editions of the short Roman Breviary in the vernacular were prepared by experts and later published. The purpose of the authors and editors was to substitute them in place of the Little Office of the Blessed Virgin or some other prayers or non-liturgical services prescribed in the Constitutions.

These Breviaries have been published on private initiative and carry only the approval of local ordinaries. In some particular cases the Holy See has allowed their use by special indult, and, by a somewhat general faculty, has granted the ordinaries of Holland permission to allow the use of the *Kleine Brevier* by the religious in their own dioceses. If there is going to be a trend in this direction, it seems highly advisable that the Holy See prepare an authentic and official short Breviary.

Advantages of the short Breviary in the vernacular:

a) It makes religious share in the public and liturgical prayer of the Church;
b) It has a great variety, apt to nourish piety and promote greater attention;
c) When prayers are said in the vernacular, Sisters know what they are praying;
d) Its recitation does not take any longer than the recitation of the Little Office of Our Lady.

Disadvantages:

a) The recitation of the Office of Our Lady or other prayers prescribed by the Constitutions often has its origin in the will of the Founder, and was chosen not at random but as a special means to promote the spirit of the Institute. Therefore there is often an intimate relation with the special end and spirit of the Institute. To substitute common prayers for them would tend to draw religious from the sources of the spirit of their Institute;
b) In some Institutes there is a long tradition, and it would be hard or imprudent to try to change customs or practices;
c) The will of even a minority of Sisters opposed to the short Breviary must be respected; they have a vested right;
d) The new prayers could possibly upset the time-table or interfere with other work proper to the Institute;
e) Since there is no uniformity of the short Breviary, this could increase the difficulty in maintaining uniform training and unity in the community;
f) The variety of non-liturgical devotions in the Church is a rich endowment which should not be permitted to be lost.

Criterion and practice of the Sacred Congregation of Religious:

These considerations suggest that the Sacred Congregation be prudent and proceed with great caution. Religious should not easily believe those who affirm that the Sacred Congregation highly favors the changes and substitutions.

This is the mind of the Holy See:

1. When no special difficulties are foreseen, the Sacred Congregation easily grants the legitimate petition of the short Breviary in the vernacular. As a matter of fact, however, serious difficulties do exist quite often; therefore, the Holy See cannot yet favor these changes.

For communities of diocesan right, the local ordinaries are competent to make the desired changes in the Constitutions. (Canon 495, § 2.)

2. In the case of Institutes of pontifical right, the Sacred Congregation usually demands that the case be discussed in the General Chapter, and that there be not only a favorable absolute majority, but a moral unanimity. Only in the case of very small Institutes is the favor granted at the request of only the General Council.
3. The favor is granted as an experiment for five years, and
4. With the following conditions:
   a. That there be no tradition in the Institute contrary to the change;
   b. That superiors and subjects agree, so that there will be no danger of divisions among the Sisters;
   c. That the change will not cause any disturbance in the domestic order or time-table.[236]

About one year later, the same writer published a brief commentary on the special edition of the Little Office of the Blessed Virgin approved by apostolic letter of Pius XII.[237] This Little Office of the Blessed Virgin was prepared by Father Bea, S.J., and edited by Marietti. The Holy Father, using his supreme authority, without consultation, allows by the apostolic letter dated March of 1953 that every Institute may use it instead of the shorter edition of the Little Office. No other permission is needed to introduce its use, except that of legitimate superiors, as a matter of discipline. The Pope does not authorize the use of the vernacular. Special permission is needed for that. Gutierrez recommends that the Little Office be printed in two languages, Latin and the vernacular, but that the Latin text be used. Indulgences granted for the recitation of the Little Office can be gained by the recitation of this Office too. Both the new or the old psalter

[236] Gutierrez, "Ex Iurisprudentia et Praxi S. C. de Religiosis, II—De Parvo Breviario in Linguis Vernaculis," *CpR*, XXXIV (1953), 263-266.

[237] *CpR*, XXV (1954), 162-164.

may be used. This edition of the Little Office is richer and somewhat longer and closer to liturgical public prayer. The use of this edition almost eliminates all reasons to discard the Little Office in order to take up the short Breviary. The Holy See, by this apostolic grant, wishes to reconcile the tradition of some Institutes which seeks to increase devotion to Mary with a greater participation in the sacred liturgy.[238]

Unhealthy Trends

In the study of dangerous trends in our age it is easy but unjust to limit oneself to superficial generalities. The symptoms of the ills that afflict the soul of men today may be many; but to take the symptoms as the whole problem would be fatal. It is better and safer to go to the root of the unhealthy trends than to cater to curiosity with statistics or biographical, unrelated data.

The Holy Father pointed out the deepest wound of our society when in the Christmas message of 1956 he said: "Something, then, is not proceeding right in the internal scheme of modern life; an essential error must be sapping its foundation. Christians are convinced . . . that the contradictions of today are proof of the glaring break between life and Christian belief, and that it is necessary before all else, to cure this evil." [239]

If anything, this is not an age of faith. Perhaps that explains the important place God has assigned to Mary in His providential plans in the twentieth century. Men are slow to accept the divine; but if it be a woman, who is the most human of all that is human, and a woman who becomes a Mother and bears a Child that men can see and touch and torture—that is much easier to accept.

The Holy Father warns that no one can tamper with genuine Catholic theology. It is the world's vital link with

[238] Cf. Diekmann, "Living with the Church in Prayer," *Proceedings of the 1955 Sisters' Institute of Spirituality*" (Notre Dame, 1956), p. 209.

[239] *The Pope Speaks* (Spring, 1957), p. 332.

God. Thus Pope Pius XII condemns "the new theology that tries to adapt itself to the modern times and to make it more natural and easier for the learned Catholic to be a Catholic," (*Divinitas,* p. 9) by watering down the trust of truth given to the Church of God. Men have never before been as indulgent towards error, and as severe, disobedient, and insolent toward the Church.[240]

This age suffers from a weakening of the theological sense. The theological sense is the sense of God in Himself, because the theological order is that of God in Himself. Men are by nature too selfish, too self-centered to find easy the concept of an absolute God. It is the Creator, the God that gives the gift of living that interests most; it is the Incarnate Word, the God that mixes with men and sheds His Blood to pay for their debts and leaves behind the precious gift of self in the Holy Eucharist that appeals most to a Christian. It is the relative God that is valued, a God busy about men. And thus many come naturally to think of a God at their service. Man, in their opinion, does not depend on God; it is God that must depend on man.

A genuine theological sense restores the order of things, with God in Himself as the center and end of all. Once this orientation is lost, all you can find on earth is genuinely trivial men. Men get ahead of God, and, apparently, God is out of step with men. But dogmatic relativity has been condemned.[241]

Man's theological vocation can be followed in no other setting than the earthly setting. So man runs the risk of minimizing the theological character of his own vocation. Yet, in the theological order, in the present economy of grace, man is called to let God be his life and his happiness. Our final vocation is to go to God in heaven, and the only way to the Father in heaven is Jesus Christ.

[240] Ottaviani, *Divinitas,* p. 18.

[241] Cf. *Divinitas,* p. 5.

Life and Belief

The primacy of man's theological vocation is manifestly and constantly announced by St. Thomas throughout the imposing structure he built in the *Prima Secundae* of his *Summa.* The angelic scholar, who so emphatically defended the firmness of human nature and its marvelous organization, now boldly affirms, with even more powerful phrases, that the keystone of the majestic arch of human destiny belongs to the theological order. St. Thomas' entire moral theology is dominated by the treatise on beatitude: man is fundamentally called to the vision of God. Here there is a clear statement of the absolutely specific characteristic of Christian revelation on the subject of man.

According to strict logic, man's most profound vocation belongs to the order of contemplation [242] and its highest exercise here on earth consists in the practice of the theological virtues. Man's end is God in Himself; and nothing outside of God Himself can take His place. Even fraternal charity belongs to the theological order, that is, it is essentially measured by God and not by the neighbor. What one seeks and loves in other men is properly " that which comes from God." But today men are not at the feet of Jesus like Mary, but face to face with the serpent like Eve, allowing themselves to be fascinated by error and easily falling its prey to be devoured.[243]

" The end of religious government is to create a favorable 'milieu' for the acquisition of perfection, by ensuring the observance of the Institute's Constitutions." [244] This is an accurate version of Canon 593 in reference to the function of religious superiors. It makes it clear that two elements are to be considered, the theological and the juridical. Superiors must think first of the perfection to be acquired; and the

[242] Cf. Frison, *Her Heart a Cradle of Life* (Los Angeles, 1957), p. 22.

[243] Ottaviani, *Divinitas,* I, 19.

[244] Philippe, " Nature of Religious Government," *Proceedings of the 1953 Sisters' Institute of Spirituality* (Notre Dame, 1954), p. 17.

means in the hands of the superiors to secure the attainment of that goal is the observance of the Constitutions. But Constitutions as a juridical tool are good only when they are successful in creating a favorable "milieu" for perfection.

When the "break between life and belief," of which the Pope speaks, enters into the religious life, the theological or ascetical aspect of this life is divorced from the juridical, and the very core of the religious goal is poisoned. A superior left with only the cold canonical command will soon discover that true government in the religious life has lost its vitality and efficacy. Indeed, a religious superior leads the community he governs from the outside, and not from within like God. But the soul of the religious life must be a sincere desire to become perfect. The superior's decisions, at least the main ones, are never left completely to his own personal choice. He must lead the subjects to perfection along a path clearly marked for him previously: the Constitutions. This Magna Charta of every individual religious Institute, freely chosen and freely embraced by each religious, binds the superior twice: as a subject he too solemnly promised to keep it; as superior he is bound to see to it that it be respected and kept.[245]

The rules are not simply a code of pragmatic administration and organization. To attain the spiritual end of the Constitutions, both superiors and subjects must assimilate their spirit and must live them in the holy climate proper to them—that of charity and love. It is not enough for a superior to see that the rules are faithfully, but only externally, kept. He must breathe into them the breath of God, the theological vitality of things divine.

The exact mission of a superior is to produce, within the limits set by the Constitutions, the environment in which the subjects can more easily succeed in the pursuit of perfection, that consists in union with God through charity. Therefore, a superior is in the first place entitled to assume that the

[245] Cf. Colin, *Il Libro dei Superiori* (Marietti, 1954), p. 60.

subjects wish to strive after perfection. The break between life and belief may be caused by the lack of this will. Religious life is possible only in an atmosphere of understanding which is sustained by the grace given with one's vocation. It is a matter of greater closeness to God by choice. Vocation works on the individual in such a fashion as to let the ideal condition for the striving after perfection flow naturally from the norms of conduct dictated by the Constitutions.

A superior who lives the rule in all its theological and juridical extent gives thereby the true value to every word of the Constitutions, with the two characteristics of living things, continuity and flexibility. Paul-Marie de la Croix tells superiors how to do it.[246] It is a work of simplification. By synthesis the superior must focus all the elements that make up the rule. Thereby he will achieve a personal, well-organized, living concept or view of each rule. Then he can see the strong lines, the fundamental and proper characteristics of the Institute. It is necessary to grasp the spirit and to feel its relationship to the evangelical law. Only in this way can one have broad general principles of reliable orientation and be able to distinguish the substantial from the accidental, to know what can be adapted and what must remain unchanged. This work is particularly difficult in small communities and in those of recent foundation. Maybe the founder, not a canonized saint, has no particularly outstanding and universally known personality. Maybe the Institute has no brilliant past and does not feel the strong flow of life that comes from a history enriched with saintly and zealous religious. Perhaps what is lacking is a strong spiritual characteristic, or a dominant and fundamental idea which could bring out forcefully the beauty and challenge of one's vocation, thus providing a sure and vigorous orientation. Then comes the temptation to borrow from various types of spirituality elements valuable and efficacious only in their

[246] "La Superieure et la Sanctification de ses Religieuses," *Directoire des Superieures* (Paris: Les Editions du Cerf, 1954), p. 118.

total context. As a result, there will arise the dangerous tendency to build one's religious life on accidentals, to introduce into the Institute exercises not flexible enough and too minute. Such an attitude must produce a spiritual sclerosis of all the living elements in the community.[247]

To restore the proper balance and intimate relation between life and belief, religious must know the essential notes of their Institute and must be trained to stand firm on them. The greatest stability is obtained by letting the essential notes rest upon a sound and solid theological foundation.

The whole structure of the Constitutions can have a deep divine meaning only when the religious has a strong consciousness of his vocation. By this consciousness is meant a real and spontaneous ability to show practically and efficiently that for him his vocation is the means to become a saint. Too many religious, in spite of God's strong and luminous call, have only an imperfect and fragmentary idea of their vocation. Often values and perspectives are false. Superiors and those in charge of the formation of the novices and young religious have the more serious obligation to possess a total, adequate and authentic idea of their vocation. This is absolutely necessary for a successful accomplishment of their duties.

Only in the theological sense of the religious vocation will superiors find the formula to solve some of the more baffling problems for those in office. The superior cannot sacrifice the individual to the community nor the community to the individual. The Constitutions are there to serve the individual, and the individual who observes the Constitutions gives strength and new life to the community.

In the religious life one achieves the perfection of his personality through a collective plan. It is like a home where man and wife are a channel of grace for each other and develop their personalities through a common plan whose basic and essential elements were outlined by God the Creator in the natural order and by God the Redeemer in the order of

[247] Paul-Marie de la Croix, *op. cit.*, p. 129, note 1.

sacramental efficacy. The pattern is the same in religious families. Now this collective plan, outwardly held together by the Constitutions as a juridical norm, needs, as the life-giving element, a theological nature. The creative and transforming action of God, Author of all sanctity, comes from above. This divine operation is the only guarantee of interior goodness in any society. That is why Christ promised His Church that He would be with it until the consummation of the world, through the Spirit of Love and holiness. The sanctity of Christ, the grace of the Head of the Mystical Body, keeps healthy and holy the Church and every one of the cells of the Mystical Body of Christ.

The Constitutions, as a theological tonic for an age where life tends to drift away from belief, should be used as a means to create a profound sense of the Cross and of the marvelous, firm, and gentle ways of God in drawing souls close to His divine Heart. By the faithful observance of the Constitutions the religious should seek not the realization of his own personal ideal, for it may often be in conflict with the prescriptions of the Constitutions; God's plans should dominate his life, and in this there is no possibility of conflict with the Constitutions.

To take sides with grace or with nature is to destroy the mystery that consists in the harmony of both. To let the Constitutions be only a juridical norm and to deprive the ascetical law of its social beneficent influence is to destroy the mystery of the Mystical Body realized in the chosen portion of the Church, the evident sign of its holiness, the religious life. The end of all social and personal activities of a religious is his personal sanctification. More specifically the acts of government of superiors, whether considered in the active subjects who are the superiors themselves or in the passive subjects who are the religious under the superiors, are, beyond all doubt, powerful means to perfection.[248] From this it is

[248] Cf. A. Peinador, *The Government of Communities and the Spirituality of Their Members* in *Cuarta Semana de Oracion y Estudio para Superioras Religiosas* (Madrid, 1953), p. 82.

clear that the external life of a religious, or what is the same, the juridical or canonical aspect of the activities of persons who have embraced the religious state, has a particularly significant value. After profession, their sanctification is in a way dependent upon their external conduct. Hence, deep appreciation and reverence for the Constitutions is normally a prerequisite of a good exterior life.

The Irreverent Age

Weakening of the theological sense and a decrease of the moral sense have brought about a devaluation of authority, tradition, and rules in general. Not that those values are flatly denied, but they are accepted more as a necessary evil than as something good. If they are ever accepted as a good thing, it is hardly in any other way than as a mystery or a scandal, the scandal and the mystery of the Cross. Indeed in our age, and in the past also, too often spiritual counterfeit values have been covered up precisely under the name of established authority or the rules. This might serve as a partial explanation for prevalent irreverence.

Pope Pius XII admitted the existence of this harmful trend when he said: ". . . youth today have no reverence toward many things that before were normally held in high esteem from early youth." [249] Lack of reverence for authority or tradition indicates ignorance of the concrete economy of God, who is wont to lead souls to Himself by means of authority and tradition. It is according to human psychology to be molded and formed, slowly but progressively, by the influence of good traditions and holy rules.

Observance and exterior discipline are possible without sanctity, but sanctity for a religious is not possible without exterior discipline.[250] It is obvious, from the context it has in the religious life, that genuine religious observance cannot be

[249] *Address to the First International Congress of Teaching Sisters* in *Vida Religiosa,* VIII (1951), 324.

[250] A. Peinador, *op. cit.,* p. 114.

satisfied with merely exterior discipline. The interior motive or supernatural reason is of vital importance. A. Peinador gives this definition of true religious observance: "It is the total life of a religious who adjusts himself to a social and exterior discipline, for *supernatural motives,* and seeks through discipline what in the first place moved his will to follow his vocation." [251] In practice, observance is the *exact,* if not perfect, fulfillment of the three vows and of the subsidiary means prescribed in each Institute, which add in the matter of the vows the spirit proper of the Founder moved by the spirit of God.

As a contributing factor towards reverence, it might be useful to consider mental health and emotional balance. One reason to consider mental health under the juridical aspect of the Constitutions could be the theory taught by Dr. Degreef of Louvain, that the feeling of guilt cannot be the genetic cause of neurosis.[252] Another reason, probably a better one, is that superiors charged with the care of religious mentally ill have to face the whole problem on the basis of external behavior.

Religious life should be the finest insurance against mental disorders. To all basic questions that baffle man's mind, who, where, why, and how: personality, orientation, motivation, and method, the Constitutions give a precise, direct and uplifting answer. The code of religious law given to every novice is meant to give him wholeness of personality and to eliminate all broken emotions. Here one finds that preventative effect is the most valuable contribution of the Church to mental health.

One of the most haunting illnesses in the United States is the state of anxiety. One third of the people who visit doctors' offices today are in this state. Reaching for a tranquilizing pill instead of facing reality can lead to the degeneration of Americans into a "flaccid race" that cannot

[251] *Op. cit.,* p. 147.

[252] Cf. *Pecado, Confesion, Psicoanalisis,* p. 129.

handle its problems. The orientation and motivation provided by the Constitutions must of necessity develop a fine personality and condition the religious to use successfully and happily the method which best answers his plans of serving God.

One other passing remark on mental health concerns superiors who are indecisive in their actions and attitudes toward the subjects, and who start to lose faith in themselves. Subjects sense this and they start to lose trust in their superiors.

The total challenge offered to the candidates by the content of the Constitutions should be fully used to test the vocation of the novices. A cheerful response, wisely guided by the proper superiors, will make the individual be his best. That is precisely the purpose of psychotherapy. The subject of mental health needs to be carefully and fully studied by competent authorities in both fields, religious life and psychiatry.

Constitutions as Moral Law

A third noxious trend in contemporary society is a decrease of the moral sense, manifested in what the Holy Father calls "a new conception of moral life." [253] The new morality is a world-wide tendency to rebel against law.[254] Its first characteristic is "dislike for authority." Philosophically it is based on existentialism, and from this it has derived what the Pope calls "morality according to situations." The new morality is hence being called "situation ethics." Now situation ethics is more an ethical mentality than an ethical system. It can be described as the mentality of those who accept the notion of personal responsibility but do not recognize an absolute moral law. It is a kind of application of the Protestant principles

[253] *AAS,* XLIV (1952), 273.

[254] Hilsdale, "The Real Threat of Situation Ethics," in *The Homiletic and Pastoral Review* (Nov. 1957).

of private interpretation to the moral order.[255] Loyal to this principle, Fisher, the Protestant Archbishop of Canterbury, recently expressed his views as follows: "The right to decide one's own moral code and obey it, even to man's own hurt, is a fundamental right of man given to him by God and to be strictly respected by society and by the criminal code."[256]

Situation ethics deifies the individual. Man is his own norm; he creates his own moral values. He is beyond the tyranny of any "totalitarian" law, even the law of nature. This is the doctrine of situation ethics in its "most pure" form.[257] This is what Pope Pius XII condemns as an attempt to divorce "the rule of the moral law from public, economic, and social life, from the actions of public authorities . . . as if God had nothing to say in these things, at least nothing definite."[258] For the followers of situation ethics no direction markers are needed when the time comes to take a step of consequence; one need not look outside himself for information. Even if one should decide on a path directly opposite to a direction sign (the objective norm), still his judgment is morally unobjectionable. One is justified in taking that way which he personally feels is right.[259]

What happens to a code of law like the Constitutions in the system of situation ethics is anybody's guess. True indeed, the system in its purest form will hardly be accepted by religious, or by any Catholic for that matter. "What one has to fear more," says LeBlond, "are certain infiltrations of situationist doctrine under the guise of themes which in themselves are authentically Christian."[260]

[255] Connery, "Notes on Moral Theology," *Theological Studies,* XVIII (1957), 561.

[256] Reported in *Newsweek,* December 16, 1957, p. 58.

[257] Cf. LeBlond, "Sincerite et Verite," *Etudes,* 292 (1957), p. 238.

[258] *AAS,* XLIV (1952), 276.

[259] Instruction of the Holy Office, *AAS,* XXXVIII (1956), 144; Carr, *Roma Locuta* in *The Homiletic and Pastoral Review,* LVI (1955), 933.

[260] *Op. cit.,* p. 238.

From a brochure prepared for the congress of the World Federation of Young Catholic Women in 1952,[261] the Holy Father quotes in his Allocution,[262] the following: "Young people confuse Christianity with a code of commands and prohibitions. They have a feeling of suffocation in this climate of morality by command, and not a few throw overboard its cumbersome baggage." Then the Holy Father takes exception to this. He never allows that "morality of command" should be divorced from "morality of charity." The command is nothing else than the Father's loving care trying to protect His children.

Hilsdale [263] believes that situation ethics has a special appeal not only to the modern secular-humanist mind, but to sincerely religious people as well, who cannot help absorbing some of its poisons. Two particular ways of justification or rationalization derived from situation ethics could damage very seriously the right attitude of a religious towards the Constitutions. They establish as the ultimate principle of morality the psychological adjustment of man rather than the absolute rights of God. The Pope indicates how in situation ethics a man rationalizes his situation: "God considers only two things; right intention and the sincerity of our response. The action is of no concern to Him." [264]

Here it is sufficient to point out that a morality in which the major emphasis is put on sincerity can easily degenerate into a morality of "heart," an intentional morality, which ignores the external act. If sincerity is the ultimate norm, we are already in the realm of situationist or individualist ethics.[265] In this case the moral principles are displaced from the center to the extreme periphery of life. As the Holy Father said, at the center is a particular real value that must

[261] *La Foi des Jeunes—Problems de notre temps.*

[262] *AAS,* XLIV (1952), 413.

[263] *Op. cit.,* p. 173.

[264] *AAS,* XLIV (1952), 416.

[265] Connery, *op. cit.,* p. 560.

be conserved.[266] This morality goes from the particular, while true morality is based on universal moral law applied to the concrete circumstances or conditions within which actions take place.

The other attitude which becomes damaging when guided by the principles of situation ethics is what they call "personal vocation,"[267] "Personal vocation" places one above every external restriction, leaving him entirely independent of any norms of conduct, "free" to answer the personal and direct vocation from God to him.—The true personal vocation or Christian dialogue, that is, the personal relationship of the individual to God, does not put him in conflict with the law. The demands of the truly Christian vocation may go beyond the law, but they will not go against it. The truly Christian vocation supplements the law; it does not replace it. It is evidently so in a life lived according to the evangelical counsels.

In the presence of this tremendous trend in the moral field, the training of religious to an understanding and love of the moral aspect of the Constitutions is no easy task. Yet this aspect of the religious life has greater significance than the ascetical and juridical values of the Constitutions. In the moral field one is directly faced with the necessity of pleasing God by obedience to the law, or of displeasing Him by letting sin enter the soul and allowing evil to defile one's conscience.

Constitutions as a moral law have to cast the anchor into the very being of man. Man today seems unable to grasp the fact that human nature must be formed and developed in conformity to a structure of a complete system of virtues by obedience to reason and divine truth, which spells out the demands upon one's manner of being. This order of things responds primarily to an objective order. Too often moral life is presented as the answer to an appeal to generosity, and therefore different in each individual. In reality it is an ob-

[266] *AAS*, XLIV (1952), 415.

[267] Cf. Connery, *op. cit.*, p. 560.

jective submission to the truth, an admission of reality. Here one might find the explanation of some of the baffling characteristics of young people. They are capable of all kinds of generosity, but at the same time they are spiritually fragile and inconstant; they have high ambitions, but little virtue. Unconsciously they find it hard to believe in the stability of a moral order rooted in human nature, an order which is a reflection of the Creator. In this difficulty they fall back upon various systems or attitudes without much reasonable justification. At times they may simply follow the impulse of their generosity or of their subjective sincerity.

As stated above, St. Thomas suggests the theological order as the keystone for the arch of human destiny; but, at the same time, he is very careful to show with perfect accuracy that the moral order is rooted in human nature. Morality when informed by theological truth is vitalized from within, and by being supernaturalized it is grafted in the core of man's being; morality is supremely human in the sense that the whole man cooperates with God. Morality and theology go hand in hand. The origin of the revolt from reason as the basis of law can be traced to the tragic disruption of Christian unity which still goes by the strange name of Reformation. It popularized and sanctioned the view that every man was his own law, as every man was his own theologian.[268]

Here in America, the attack on law as wisdom was the life-work of one of the greatest names in our legal history, Oliver Wendell Holmes. He acknowledged no standards save those of current utility and contemporary success.[269] He is worth mentioning here because his influence has affected, even dominated, the subsequent course of legal development in our country.[270]

[268] Dwyer, "Law as Wisdom," *The Jurist*, XVI (1956), 343.

[269] Cf. Holmes, *The Common Law* (Boston, 1938), pages listed in index s. v. *law*.

[270] Dwyer, *op. cit.*, p. 343.

The Terrible Temptation

The Holy Father spoke of another characteristic of the new morality when he said: "The world knows also nowadays a terrible temptation to materialism . . . It expresses itself in the cult of the body, in the excessive search for comforts and the flight from all the austerities of life . . . It resides in the unrestrained search for pleasure. It shows itself in the lack of interest in one's brother, in the selfishness that crushes man, in the injustice which deprives him of his rights; in a word, in that concept of life which regulates all things only in terms of material prosperity and earthly satisfactions." [271] How this terrific indictment ties in with the religious life is indicated by the Roman Pontiff when he adds: "Our thoughts turn first of all toward the consecrated souls who, within the framework of the Church, devote themselves to innumerable good works. Their religious vows urge them more than others to fight victoriously under the aegis of Mary against the unleashing upon the world of the unreasonable desire for independence, for riches and pleasure."

The desire for independence is the most direct attack on the Constitutions, the greatest peril to the perfection of religious life. Pope Pius XII emphatically stated this truth in his address to the Jesuits last September, when he said: "Certainly, those who consider that the doctrine of that epistle [of St. Ignatius on obedience] is now something which should be abandoned are mistaken, as are those who think that hierarchic and religious obedience should be replaced by a certain 'democratic' equality, in which the subject argues with the superior on what should be done until they find themselves in agreement on the same point." [272]

Here the Holy Father condemns in clear terms the so-called "religious obedience and dialogue," in the sense of equality of superiors and subjects. This touches the very nerve of the

[271] The Lourdes Pilgrimage, *Encyclical Letter* (July 2, 1957), English translation of the National Catholic Welfare Conference News Service.

[272] *Allocution, AAS,* XLIX (1957).

most effective power of the Constitutions. The truth is that a subject who asks to be directed to the realization of his own ideal, which in the final analysis is exactly the same as the ideal of the Institute he has chosen, does not command, he obeys. On the other hand, he knows that he must obey in everything not contrary to the rules to which, after a long examen, he has spontaneously submitted himself as the best way of doing God's will and of thereby preventing self-love from upsetting the right order towards God. This excludes any possible self-interpretation of one's personality.

It should be understood that the meaning of dialogue between superiors and subjects does not apply to the humble explanation given to a superior of the concrete situation of a subject regarding particular commands given by the superior. A subject may always, and sometimes must tell his superior about his own present physical condition, like health or lack of it, social circumstances, such as reactions to persons, places or offices, and his moral difficulties, especially those coming from the outside.

What the Holy Father condemns under the name of "dialogue" is to bring to the court of one's mind, in order to pass judgment on it, the order received, to submit the order to a detailed examen and cross-examination, to weigh the reasons in favor of and against it, with the idea that the subject has a right to make obedience depend on the result of the dialogue between superior and subject. In this case the obligation to obey depends entirely on the result of the dialogue. That is alien to the evangelical concept of obedience.

All this pertains to the dialogue started by the subject. However, one cannot ignore the value of some dialogue initiated by the superior. According to A. Peinador, there are times when a dialogue initiated by the superior is imposed by prudent government, or even by the virtue of charity. This case may arise regarding ordinary acts of government, the daily application of the rules of discipline, or the instructions received from the higher superiors. A moderate and discreet

dialogue which does not touch authority itself, nor the prestige and responsibility of the one who commands, might well serve to test the strength of the subject and to find out his dispositions and inclinations. This will allow a more objective appreciation of the possibility of success or failure in carrying out the commands. In any case obedience must be an act of the will submitting to the criterion and command of the superior.[273]

According to St. Thomas, obedience is a virtue inspired by three great virtues: religion, piety, and reverence, which in turn are an unfolding of the virtue of justice. Those three virtues are the foundation of obedience. This Thomistic structure of obedience cannot be supplanted by the modern democratic ideas which tend to make obedience a matter of love, the simple union of wills, or a mere understanding between superiors and subjects, but which eliminates all commands and obligation to obey, leaving only "obedience of dialogue" or simply persuasion. Some accuse St. Thomas of legalism because he makes obedience a part of justice. But he is right. Obedience is not attachment to the superior, neither is it charity, although it must be informed by charity, like any other Christian virtue.

The Fulness of Obedience

The problem of obedience basically is the problem of the relationship between God and man. The redeeming obedience of Christ is not only the reparation of the order destroyed by a voluntary act of disobedience; it is a new manner of being and of life for creatures in their relationship to God. According to St. Paul, Christ's obedience sums up the entire work of the salvation of the world. Christ's obedience is not only a model. Christ became *obedience*. His intimate personality rests on a perpetual act of obedience: "My food is to do the will of Him Who sent me." We are included in this; He is our obedience to God. Jesus Christ's obedience is redeem-

[273] *Religious Obedience and Dialogue* in *Vida Religiosa,* XIII (1956), 215.

ing; and so must be our obedience. This law of the Incarnation contains the truest demands of obedience—of supernatural obedience, that is. No wonder, then, that St. Thomas never quotes a single pagan philosopher as an authority on obedience; his sources are only the Sacred Scriptures and the Fathers.

Religious obedience fulfills the ideal of Christ, for it is not only a more or less general orientation, but a complete and detailed orientation of life towards God. The true theological or supernatural foundation of religious obedience consists in this: that one accepts and carries out the requirements of universal obedience, total service, and complete submission to the divine will in each action of one's life. Christ made this the ideal of Christian or evangelical obedience.

For a religious, obedience comes about this way. The essence of the religious profession is not a contract with the Institute. And so it is not an agreement entered upon with the religious community whereby one binds himself to obey its superiors. It is something higher, of the juridical and at the same time of the theological order. The essence of the religious profession consists in the public vows made to God, of which the fundamental vow is that of obedience. Of course, religious profession contains also, precisely in virtue of profession, a tacit contract with the superiors and the Institute whereby one accepts the obligations of the regular life as lived in the Institute with all its established organizations and practices, and binds himself to observe them. At times this tacit contract is explicitly mentioned in the formula of profession. This agreement is not a strict bilateral contract producing rights and duties of commutative justice. The main thing is religion, even as a factor or basis for the obligation that arises from it. As the religious binds himself to God and for the sake of God to the Institute, so the Institute binds itself in virtue of religion to supply the members with all that is needed for their support and other necessaries of life. The tacit contract mentioned above is an agreement of incorpora-

tion, and is entered into by the candidate and the Institute.

These, then, are the two ideas that loom big on the horizon of the life of a religious: the vows (or promises) made to God and the incorporation into the Institute. But in practice one finds that every religious superior has dominative powers (Canon 501, § 1). This seems to be the bridge that links the obligations which a religious has before God with the incorporation into one's Institute. Dominative power makes articulate the whole system of common life in the religious state. This stands to reason, because dominative power flows from the vow of obedience, and has as its formal cause the incorporation into the Institute. In this lies the reason why the immediate matter of the vow of obedience is *all* that the superior commands.

Nowhere else than in religious obedience is better exemplified the hierarchical order of obedience announced by Christ when he told Pilate: "Thou wouldst have no power at all over me were it not given thee from above." (John, 19:11). No other obedience has the depth of human and personal contribution, and the height of divine demand found in religious obedience. Religious obedience is substantially human, for it is an obedience to superiors of a society of men; but the place superiors occupy in the hierarchical plan of God, makes that obedience remotely obedience to God. Although it is a remote obedience to God, it is more immediately and directly referred to God than any other human obedience. And this on two counts—because the religious is under the promise he made to God to obey the superiors, and because the final end of such obedience is supernatural, that is, the sanctification of souls through the pursuit of one's religious perfection.

From this follows a very important consequence which gives a special character to religious obedience, and without which no one can adequately explain this type of obedience. A religious obeys within the mystery of Christ, safely guided by faith. This can be done only with the infused and super-

natural virtue of obedience, raising the human capacity for obedience to the perfect harmony of wills given to men as the supreme example, the marvelous blending of Christ's human and divine will. Another consequence is that religious obedience is more interior. It is not only an obedience of execution; it sinks its roots and takes its nourishment from the heart of a society of souls living in Christ and firmly united by the bonds of divine charity.

Only those who understand clearly these premises can give the correct answer to this question, often asked in our days: Which of the two forms of religious obedience is better, the traditional norm of making the religious a holocaust on the altar of God, or the modern idea of greater freedom and personal initiative? Pope Pius XII gave an authoritative answer to this question by setting before the eyes of the entire world the glorious example of Christ as described by St. Paul in his letter to the Philippians: "He humbled Himself, becoming obedient to death, even to death on the cross." [274] It is not his human personality which a religious must safeguard, but rather the religious and supernatural personality whereby he strives to be one with Christ.[275] Whoever rejects this supreme norm of religious obedience, says Pope Pius XII, "deceives others and himself." [276]

Good Government

But because religious today have a greater maturity, there is in the religious life a more prevalent fear of incompetent government and of obsolete modes of life and methods of apostolate. Youth may experience a natural dislike for the Institute when they discover that it does not seem to answer present needs, or remains inefficient and not adapted to the

[274] 2:8—*Allocution* of the Supreme Pontiff to The First International Congress of the States of Perfection, *AAS,* XLIII (1951).

[275] Cf. John-Mary of the Holy Family, "The Genuine Concept of Religious Obedience," Summary, *Proceedings of the International Congress of the States of Perfection* (mimeographed notes, Washington, D. C., 1952), p. 28.

[276] *Allocution, AAS,* XLIII (1951).

apostolate. The greatest evil in religious communities is the lack of good government. And that is the reason for much criticism and laxity in the matter of obedience.

A good superior commands when it is prudent and proper that a command be given; and he advises when it is prudent and proper to advise. Too much eagerness on the part of superiors to command usually is met by much eagerness to disobey on the part of the subjects. The ideal setup would be an obedient soul in the subject and human understanding in the superior.

The Holy Father wishes that the new be properly used to enhance the old.[277] Therefore, the demands of obedience should take into consideration that vocation is a very personal experience, and that great discoveries have been made by the most orthodox modern psychology. Meagher made a very pertinent observation which should put everyone on the right track when speaking about psychological interpretation of life. He said: "The bond holding [the religious obedient man] to submission is not a physical impulse of the psychological order as in the case of the weak man; it is a moral one, and exists by his own deliberate choice." [278] Bissounier approaches the problem of initiative and religious obedience, stating that "a false notion of obedience is a most dangerous anomaly in a world that strives toward the emancipation of the human person as well as the most perfect coordination and unity." [279] Basically the problem of religious obedience arises from a conflict between the demands of the higher concept of the supernatural and religious personality and the demands of the purely human, not always healthy, personality of the individual religious. As Heer put it, "The Christians of our time are very often

[277] *Allocution, AAS,* XLIII (1951).

[278] "The Spirit of Religious Obedience in Modern America," *Men's Religious Community Life in the U. S.,* Proceedings of the Men's Section of the First National Congress of Religious of the U. S. (Paulist Press, 1952), p. 193.

[279] "Initiative et Obeissance dans la Vie Religieuse," *L'Obeissance* (Paris: Les Editions du Cerf, 1951), p. 257.

psychopathically cramped beings whose ability to love remains unripe because it is uncultivated." [280]

Infantilism makes a religious feel very much out of place, today more than ever before.[281] It would be unfortunate to confuse infantilism with the simplicity of the dove, the innocent and unaffected ways of sincere religious. That might be very much out of place in a world highly sophisticated and too much attached to material things and personal gains and success as such. Infantilism is emotional immaturity, self-centered preoccupation and unrealistic naïveté in judging human events and attitudes.

Experience teaches that genuine religious obedience, when sincerely practiced for supernatural motives, leaves no room for emotional disturbances, and centers life in God far away from selfish goals. Of themselves neither obedience nor personal initiative will supply a realistic judgment about other people. This is the result of experience and contact with life. Yet young people should not wear an adult head on their shoulders, nor people with shoulders bent with age an immature head.

The best solution, in the opinion of Bissounier, to the problems created by personal initiative and religious obedience is found in the proper use of permissions.[282] There is a large area of activity in the religious life which is regulated and sanctified by permissions given by the competent superior. This refers to many things that must be done at some time in one's life, but which are withdrawn from the final decision of the subject. Canon 534, for instance, states that for certain types of alienation permission of the Holy See is required. There will be times when a prudent administration of temporal goods will require alienation; yet, in order to act legitimately in such cases, the proper permission must be obtained. In the daily life of the religious, certain small matters have

[280] "The Saint of a New Era," *Cross Currents*, V (1955), p. 315.

[281] Bissounier, *op. cit.*, p. 258.

[282] *Op. cit.*, p. 263.

been placed under the authority of the superior; his permission is needed to act.

The important thing in the matter of permissions is to know the reasonable boundaries contained within the spirit of the Institute; when something is left to one's initiative for planning; and, finally, that action be actually controlled by the authority of the superior. These three elements must be present if initiative is going to be the kind that can develop one's personality through the use of permissions.

In practice, the idea or policy of a religious who feels that all that is needed is to ask for permission can be a most damaging solution. Permission plays a very important role in the religious life. For a good religious who understands the true spirit of his Institute and wills to live up to it, permissions will serve as the finest and most accurate way of doing God's will. The greater the personal responsibility in certain activities, the greater the assurance given by the permission of the superior that one is doing God's will. To have the courage to ask for permission whenever it is required by the common or particular law and to be disposed to accept the decision of the superior is possibly the highest indication of a perfect religious life. In such cases the superior whose permission is asked finds in the trust and loyalty of the subject one of the greatest human satisfactions possible for those in office, and the subjects find in that action the most consoling expression of God's paternal providence over them.

It cannot be ignored, however, that a mere routine practice of asking for permissions cannot be the means of achieving perfection in the religious life or of developing any personality. Asking for permissions when the superior is bound by higher principles and motives to refuse to grant it can be a most unpleasant experience for both superior and subject. If the subject lacks a sound basic criterion of the religious perfection demanded in his Institute, or is moved by unworthy motives, he can easily convince himself that what he is asking should be permitted. Now if he often asks for what cannot be granted, he will feel frustrated and crushed by the refusals of the supe-

rior, and the superior will feel disappointed and perhaps bitter about the number of times he finds himself bound to give a negative answer. Then trust, confidence, paternal attitude, and the rest of the good qualities proper to true family life in a religious community easily vanish. A superior cannot try to explain things every time he has to refuse something.

The role of permissions touches only a very superficial part of the religious life. A natural and joyful use of permissions is predicated on the understanding and acceptance of the essence of the religious life as lived in one's Institute. Then, and only then, can initiative have a magnificent, vital, and fruitful role. Only then is it possible to blend initiative with obedience. Religious unity of minds is possible only when the mind of the superior and the mind of the subject meet in the mind of God. The role of the mind of the superior is not identical with that of the role of the mind of the subject in this meeting in God's mind. When a search for God's will has to be instituted, that is, when a decision has to be made as to what God's will might be in a specific case, the role of the subject is receptiveness, while that of the superior is a role of intense activity of mind and will at the service of God.

Synthesis of the religious life in the will of God elevates all the juridical and social elements to the only true unifying factor in the universe, the source of all life and the end of all creatures: God. In this sense, Meagher states that "a fine spirit of religious obedience will always stimulate and encourage the exercise of initiative." [283] As a rule, candidates to the religious life begin with at least a fair basic willingness to obey, and with little or no understanding at all of the spirit of religious obedience as practiced in the Institute. The only method to be followed in the training of beginners, therefore, is outlined by Meagher as follows: "It is necessary to see that they [youths] are habituated to the traditions of the community, to the ways of thinking and feeling and acting which the community wants to preserve, before anything but a very limited initiative can be safely entrusted to them." [284]

[283] *Op. cit.*, p. 194.

[284] *Op. cit.*, p. 195.

Conclusion

Since the old landmarks have been submerged by the flood of change and the old rules of tradition and precedent no longer avail,[285] there is a greater need today of holding to the essentials.

The first step in following one's vocation should be the discovery of the reality of a complete way of life as contained in the Constitutions of the Institute. The discovery of good things is a joyful experience; and when the discovery unfolds before one's eyes the perfect method to make every day a concrete realization of God's plan, one has discovered a great treasure. That is the living tradition that keeps vigorous and powerful the evangelical spirit adapted by the holy rules which were inspired by God in the founder and sealed with the seal of the approval of the Church. If a religious is going to live a lasting spiritual life in his Institute, he must discover it in the current of life of his own religious family.

It is possible that there is not sufficient understanding and formulation of the sense of theological purity, of the consistency of the moral order, and of the living tradition and authority that reposes in the religious life to orientate properly and powerfully the life of every religious. The solution to this situation is a coordinated effort to achieve the fulness and plenitude of life in the reality of God, in the synthesis of truth and love. It is no longer a question of whether one will choose action or contemplation, seclusion or contact, sacred Scriptures or positive theology, personal prudence or obedience. There is no room for compromise. All those values are needed; none can be spared.

The path is clearly marked out for every religious. "For you your institute is the road toward God." [286]

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[285] Dawson, *The Teacher of Nations* in *Pio XII Pont. Max.* (Vatican City, 1956), p. 191.

[286] *Allocution* of Pope Pius XII to the Jesuits, *AAS*, XLIX (1957), 812.

Cases and Studies

THE QUESTION OF THOSE BAPTIZED "IN ECCLESIA CATHOLICA" *

The title of this study suggests that Christians can be classified under two categories, namely, those who are baptized "in Ecclesia Catholica" and those who are baptized "extra Ecclesiam Catholicam." Before any accusations of heresy are alleged, we wish to affirm at the beginning that according to Catholic doctrine there is only one baptism. Baptism is a Sacrament of the New Law instituted by Our Lord, Jesus Christ, for the purpose of removing original sin. Furthermore, the Code of Canon Law asserts in Canon 87 that through baptism a man is constituted a person in the Church of Christ with all the rights and duties of Christians. However, as regards the juridic effects there may be an obstacle which breaks the bond of ecclesiastical communion, or the Church may impose a censure which prevents the full exercise of rights. Inasmuch as no distinction can be made between Catholic baptism and Protestant baptism, it follows that "per se" all baptized persons are subject to the laws of the Catholic Church, unless they have been explicitly exempted from the observance of the law.

The term "baptized *in Ecclesia Catholica*" was introduced into the canon law of the Church through the decree *Ne temere* of August 2, 1907.[1] Because this decree dealt exclusively with legislation

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[1] For the matters treated in this study, see *AAS*, III (1911), 163; XL (1948), 305; *Codicis Iuris Canonici Fontes*, n. 4340; Abbo-Hannan, *The Sacred Canons*, II, 265; Ayrinhac-Lydon, *Marriage Legislation in the New Code of Canon Law*, p. 142; Boudreaux, *The 'ab acatholicis nati' of Canon 1099, par. 2*, p. 40; Cappello, *Tractatus Canonico-Moralis de Sacramentis*, 6. ed., V, n. 411; Coronata, *De Sacramentis*, III, n. 572; Gasparri, *Tractatus Canonicus de Matrimonio*, I, n. 568; Hervé, *Manuale Theologiae Dogmaticae*, 8. ed., III, 575-576; Heylen, *De Matrimonio*, p. 281; Knecht, *Handbuch des katholischen Eherechts*, p. 651, footnote 2; Triebs, *Handbuch des kanonischen Eherechts*, p. 320; Vermeersch-Creusen, *Epitome Iuris Canonici*, 7. ed., II, n. 344; Wernz-Vidal, *Ius Canonicum*, V, 700.

on marriage, the terminology was confined to matrimonial legislation. The new Code of Canon Law, which became effective for the Universal Church on Pentecost Sunday of 1918, retained the phraseology of the decree *Ne temere,* and so we find that Canon 1070, § 1, and Canon 1099, § 1, n. 1, speak of those baptized " in Ecclesia Catholica." As the legislator speaks explicitly of those who have been baptized " in Ecclesia Catholica," it follows that there must be those who have been baptized " extra Ecclesiam Catholicam."

The terminology that has been sanctioned by the sacred canons does not deny the dogma that there is only one baptism. It merely refers to certain juridic effects which will follow when a person is baptized " in Ecclesia Catholica "; and the Church relinquishes her strict right over those who are baptized " extra Ecclesiam Catholicam," whenever this is mentioned expressly in the law.

There is no denying the fact that after the Protestant Revolt of the 16th century, Christian denominations are to be found outside the Catholic Church. These Christian denominations aggregate members to themselves through baptism. By the year 1907 the Church had considered the actual circumstances that had evolved through the historical developments following the Protestant Revolt. While the terms " in Ecclesia Catholica " and " extra Ecclesiasm Catholicam " do not deny any dogma, they do signify an external incorporation and aggregation to the Catholic Church or outside the Catholic Church.

Through the introduction of this concept into the legal system, the Church has given relative freedom to non-Catholic Christians who have never professed an adherence to the Church. Thus the Church has avoided many difficulties, particularly in regard to the validity of marriages. The Church, on the other hand, has always maintained complete jurisdiction over those who belong to the Church either by baptism or by conversion, because according to her teaching there is absolutely no valid reason for anyone to separate himself from the Church.

Having disposed of these preliminary remarks, we can proceed to the problem at hand and consider in detail those who are baptized " in Ecclesia Catholica " and those who are baptized " extra Ecclesiam Catholicam."

The deciding factor in these cases is the *intention,* which determines into which Christian denomination a person wishes to be-

come incorporated. The intention can be: 1) on the part of the person who requests baptism. It is evident that a person can form an intention provided he has attained the use of reason; 2) on the part of parents or guardians who have not lost their right over the person to be baptized. This intention is the determining factor in the case of infants; 3) on the part of the minister of baptism, when the parents or guardians have relinquished their right over the infant or have lost their right over the infant, for example, in cases of foundlings.

From the above we can make the following practical application:

a) Infants, that is, all children under the age of seven, who are brought by their parents or guardians for baptism to a Catholic priest, must be considered as baptized "in Ecclesia Catholica." This is true even if the parents or guardians are non-Catholic, for in the above case they manifest their intention of having the child incorporated in the Catholic Church. In this case we presume, however, that the child will be reared in the Catholic Church according to the prescriptions of Canon 750, § 2.

b) Infants of non-Catholic parents or guardians, who are brought for baptism to a non-Catholic minister, must be considered as baptized "extra Ecclesiam Catholicam."

c) Infants of Catholic parents or guardians, who are baptized by a Catholic minister, for example, a priest, a doctor, a nurse, a nun, in danger of death, when it is to be foreseen prudently that death will follow, must be considered as baptized "in Ecclesia Catholica."

d) Infants of non-Catholic parents or guardians, who are baptized by a Catholic minister in danger of death at the request of the parents having the intention of aggregating the infant to a non-Catholic sect in case of survival, must be considered as baptized in the Christian denomination to which the parents or guardians themselves belong.

e) Infants of non-Catholic or infidel parents or guardians, who are baptized in danger of death when it is to be foreseen prudently that death will follow and the non-Catholic or infidel parents or guardians are unwilling to have the child baptized, must be considered as baptized "in Ecclesia Catholica," because the attitude of the parents or guardians in this particular case is unreasonable, and hence they relinquish their rights over the infant.

f) Infants of Catholic parents, who are baptized by a non-Catholic minister, through fraud, deceit, error, or force, must be considered as baptized " in Ecclesia Catholica," because in this case the intention of the parents prevails over the intention of the minister. If the intention of the parents is not evident, it must be presumed that they had the intention of incorporating the infant into the Catholic Church.

g) Infants of non-Catholic parents or guardians, who are baptized illicitly by a Catholic minister, that is, contrary to the prescriptions of Canon 750, must be considered as baptized " extra Ecclesiam Catholicam," if they are reared from infancy in heresy, schism, or infidelity. They must be considered as baptized " in Ecclesia Catholica," if they are reared from infancy in the Catholic Faith. While this particular question is quite doubtful, the weight of the argument seems to be on the side of those who maintain that the child is baptized " in Ecclesia Catholica," particularly since the abrogation of a section of Canon 1099, § 2, which refers to the " ab acatholicis nati." Pope Pius XII decreed that all children baptized " in Ecclesia Catholica " are bound to observe the canonical form of marriage. However, the Holy Father draws attention to the careful observance of the prescriptions of Canons 750-751.

h) Infants of apostate parents, who are offered to a non-Catholic minister for baptism, must be considered as baptized " extra Ecclesiam Catholicam "; and they are presumed to be aggregated to the religious sect to which the minister belongs. The parents themselves have been deprived of their rights over the infant, and hence the intention of the minister decides the issue.

i) Infants of apostate parents, who are offered to a Catholic minister for baptism, and are reared from infancy in heresy, schism, or infidelity, are considered by some authors to be baptized " in Ecclesia Catholica," because the parents lost their rights over the infant and they were deprived of making an intention. Therefore, the intention of the Catholic minister decides the issue. Others maintain that the infant must be considered as baptized " extra Ecclesiam Catholicam," because the parents were not deprived of their rights over the infant, and the subsequent education of the infant in heresy, schism, or infidelity, indicates that the parents must have had a contrary intention to the intention of the minister. We are inclined to favor the opinion of those who maintain that the infant

is baptized " in Ecclesia Catholica," basing our assertion on the Holy Father's change of Canon 1099, § 2.

We have tried to enumerate every possibility in regard to the question of infants. There now remains the question of adults, because we realize that this point may be of importance in pastoral work. In the case of adults the intention of the adult himself is the deciding factor in regard to the incorporation or aggregation to the external communion of the Church. In case of doubt we should also consider the ceremonial rite that was employed in the administration of the sacrament.

a) An adult, who asks for baptism by a priest, is baptized " in Ecclesia Catholica."

b) An adult, who asks for baptism with the express or tacit intention of being baptized " in Ecclesia Catholica," but is baptized by a non-Catholic minister with the intention of aggregating him to the sect to which the minister belongs, is baptized " in Ecclesia Catholica." This follows the general rule that an adult, who asks for baptism with the express or tacit intention of wishing to be ascribed to the Catholic Church through this baptism, is baptized " in Ecclesia Catholica," regardless of the religious affiliation of the minister or the minister's intention.

c) An adult, who is baptized by a Catholic doctor or Catholic lay person, and who has the express or tacit intention of being aggregated to a non-Catholic sect, must be considered as baptized " extra Ecclesiam Catholicam."

d) An adult, who asks for baptism from a priest in his office as priest and who has the intention, either express or tacit, of becoming aggregated to a non-Catholic sect, must be considered as baptized " in Ecclesia Catholica," because it is generally accepted that his intention gives way to the intention of the minister in this particular case.

e) An adult, who without any particular relationship to the Catholic priest or Catholic minister and without any particular relationship to the Catholic Church asks for baptism with the express or tacit intention of aggregating himself through baptism to a heretical or schismatic sect, must be considered as baptized " extra Ecclesiam Catholicam," although the Catholic minister may have the intention of aggregating him to the Catholic Church.

The difference between the case in section d) and section e) rests in the fact that in section d) the adult had a particular relationship to the priest as priest, who administered the Sacrament of baptism according to the form prescribed by the Roman Ritual. While the adult's intention was different from the intention of the priest, this case of doubt must be settled in favor of the intention of the priest.

f) It is generally held that in doubt it must be presumed that the adult in asking for baptism has the intention of aggregating himself to the religion which the minister professes. Unless the contrary is certain it is always presumed that the minister who confers baptism has the intention of aggregating the subject to the religious community to which the minister himself belongs. This presumption, however, is always overcome by a certain contrary intention on the part of the one baptized.

It would be extremely difficult to enumerate all possibilities that might arise in the course of pastoral administration. In the topic under discussion we have tried to envision every circumstance, and we fully realize that cases may arise that will defy every solution. In an attempt to solve certain problems, we wish to call attention to the fact that the Holy See requests that cases of doubt be submitted to its judgment and decision.

If we have not accomplished anything more, at least we have made an effort to show that in law there are those who are baptized "in Ecclesia Catholica" as well as those who are baptized "extra Ecclesiam Catholicam."

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MORAL OR JURIDICAL PERSON?

There are more ideas in our mind than words in our language. It thus becomes necessary to make one and the same work do the duty of standing for or signifying more than one idea. This is true of all languages. But what is surprising is that it is also true of scientific languages which learned men have consciously evolved or chosen to express their precise concepts. The word *person* is one such case in point among thousands in canon law.

Metaphysics, ethics, and psychology deal with the personality of man, each from its own point of view, and therefore each science giving the word person a special meaning. In law, however, it means the subject of rights and duties. Law also is taken in more than one meaning. For there is the natural law, there is the divine law, and lastly there is the positive law, either civil or ecclesiastical.

According to natural law, every man is a person—a subject of rights and duties. From the moment a human being is conceived in the mother's womb, that being is a person and begins to have its own rights, which rights everybody else, including the parents, must respect—such as the right to life and limb, the right to sustenance and protection. These rights are termed natural rights as flowing from the nature of man itself. The duties of natural law the man will begin to fulfill when he comes to the age of reason.

Every man is born the subject of a state through his parents. In its turn the state not only protects and enforces the natural rights but also invests its subjects with various other rights and freedoms. These vary in extent and number from state to state. In their entirety these civil rights are enjoyed only by the citizens of the state.

Moreover, man comes into the world not ready-made, so to say, but with powers and possibilities, needs and necessities which are numerous, ever increasing and oft recurring. He cannot supply or satisfy them all by himself and he ever stands in need of the help and co-operation of men like himself. In a word, man is born a social being. To satisfy his needs and wants even of the primary kind such as food, clothing and shelter, to improve and better himself bodily, mentally, religiously, and spiritually, he stands in constant need of other men.

As many of these needs or wants are permanent or recurring, it becomes necessary to devise ways and means of supplying them continuously. This is done through association of men of like minds and aims for particular purposes. Thus arise associations of various kinds known by various names, such as companies, clubs, guilds, etc., with the object of providing facilities for members to improve themselves physically, financially, morally, and so forth.

The association of men for a purpose may last for a short time, for instance when they meet to play a game of football or of bridge. If the group think it worth while to continue the association, they may decide to continue the association and make arrangements to obtain other members in order to perpetuate the club. In this case a something seems to come into being very similar to human beings, but distinct from the members who thenceforth may come and may go, but that something goes on, and may go on for ever. That something, the subject of rights and duties, is the football team or the bridge club.

Though this entity, the football team or the bridge club, is not visible to mortal eyes as distinct from the members composing it, yet the eye of the mind perceives it and distinguishes it from the members. By reason of this perception and distinction, this something, which is also a subject of rights and duties, is called likewise a person. Although it behaves in this respect like any Tom, Dick or Harry, and yet not quite exactly like them, it is therefore called a *moral* person, a right-and-duty-bearing unit.

This much seems to emerge from the nature of man itself, from his need of forming associations with other men. And so moral persons seem to follow him as his shadow. The right to form associations is thus a natural right of man.

The purpose of the state is to protect man and his rights and thus help him to live an orderly life with other citizens. Hence, just as the state protects its subjects and their rights, so also it protects the associations they may form for their common good. When therefore a state acknowledges and protects the rights of certain associations or moral persons, these may then be called *juridical* persons. The state may also invest with rights and duties not only moral persons which follow as shadows the natural right of every man, but it may also give a being and a name to other objects which do not seem to naturally call for it, such as funds or estates.

The need to invest these objects with the right of moral personality does not seem to flow directly from the nature of man itself. That need may equally well be supplied in other ways, as we shall see below. But the civil law may create such moral entities on its own authority in so far as they are deemed necessary for the common good of its subjects.

* * * * *

In the light of these explanations let us now try to understand the canons which deal with the moral and/or juridical entities. The Code sometimes uses the words *persona moralis* and *persona iuridica* as synonymous and sometimes it seems to distinguish between them. Hence the hesitations of the commentators. Some of them admit a distinction between them, while others reject it.[1] But if the reader were to bear in mind the explanation of and the distinction between the moral and the juridical person proposed above, it will not be very hard to reconcile these apparently conflicting canons and opinions.

The Code uses the term *persona moralis* most frequently, beginning in canon 4, and *persona iuridica* only in three places, namely in canons 687, 1489 and 1495, § 2; it also has *ens iuridicum* twice in canons 1409 and 1410, and *corpus morale* once in canon 2255, § 2.

The Code does not define these words anywhere. In canons 99-102, however, it gives a description and enumerates some characteristics of a moral person. According to canon 99 a moral person comes into being when constituted by public authority, which in a positive society like the Church comes ultimately either from Christ Himself or from the Church. Since all power on earth and in heaven is given to Christ, it follows that the Catholic Church and the Apostolic See have this personality from divine authority and the other moral entities get it from the authority of the Church either by provision of Canon Law itself, as in the case of parishes or religious institutes, or by a special decree of a competent ecclesiastical authority, as in the case of associations of the faithful (canon 687).

From this doctrine of canons 99 and 100, it appears clearly that what is stated or described here is not a moral but a juridical person, since the entity is said to get its being only by way of a positive disposition of law or through a decree issued by a competent

[1] Mörsdorf, *Die Rechtssprache des Codex Iuris Canonici*, p. 121.

authority in the Church. Such a person or entity, therefore, acquires its rights and duties from law alone, and it should therefore be properly called a juridical person, as is in fact done in canon 687. Whether prior to this authoritative or creative act such persons or entities have a personality in natural law is not apparent from these canons.

But it must be so in the nature of things. For the supernatural does not destroy the natural law but elevates it. By becoming a member of the Church through the baptism of water a man acquires a new personality, a juridical personality, and thus becomes the subject of rights and duties of Christians without losing any of his natural rights. The needs and exigencies of the supernatural life are no less numerous, no less permanent, no less recurring. In the supernatural life, as a member of the Church, man remains a social being, even to a greater extent than in the natural life. As baptized persons, too, the faithful may form associations for purposes of piety, charity, or cult. Such associations, sodalities, or pious unions may acquire moral personality in the natural law, the rights of which Christians do not lose on entering into the Church by baptism. But if they wish their organizations to be recognized by the Church as such, then naturally they have to submit to the prescriptions of her authority.

Thus canons 684-686 suppose this right of the faithful to form associations among themselves. These organizations may even have moral personality in the natural law. As the purpose of such bodies is either spiritual, liturgical, or charitable, they all come under the supervision and guidance of ecclesiastical authorities in matter's pertaining to faith and morals (canon 336, § 2). They may also seek the recognition of the Church in order to obtain further rights and privileges at her hands.

Now this recognition of the Church given to the associations of the faithful appears in three grades. Canon 684 directs that " it is praiseworthy on the part of the faithful to give their names to associations which have been erected or at least approved by the Church." To these two categories of associations—*erectis vel saltem commendatis*—the corresponding canon in the Oriental law, canon 530, adds a third one—*vel probatis*—thus making up for the deficiency of the Latin canon. There are, then, three kinds of associations in reference to ecclesiastical law. To proceed in the inverse order, they may be:

1. *Recommended.* This entails the minimum connection with the Church. Such are all the pious and social works which the faithful may undertake. The recommendation of the Church does not alter either their organization or their scope. They remain, as before, lay organizations.

2. *Approved.* The approval of an association is rather an official act of competent church authorities. By this approval the association becomes an ecclesiastical one. But the approval does not create them; it rather supposes their existence. Nor does it confer on them juridical personality. In virtue of this approval, however, they become capable of obtaining spiritual favours from the Church and especially indulgences (canon 708).

3. *Erected.* The erection or establishment of a moral person may take place in two ways: by provision of law, and by a special decree (canon 100).

a) *By law.* Juridical personality may arise from the provision of canon law itself. In this case, therefore, moral personality arises independently of the decree of erection. It is true that such entities, too, are erected by means of a decree of the competent ecclesiastical authority, as, for example, religious houses, parishes, etc. Yet the decree of erection in this case does not confer moral personality on the entities so established. Prior to their establishment the Code itself has invested them with moral or juridical personality (canon 100).

b) *By decree.* "Associations of the faithful acquire juridical personality in the Church only when they have obtained from the legitimate ecclesiastical superior a formal decree of erection" (canon 687). A formal degree of erection by a competent ecclesiastical authority is thus absolutely necessary to make an association already existing or one which is being brought into existence now a juridical person according to Canon Law. It is thus the ecclesiastical law which gives this body a moral personality in the Church. Hence it is rightly called here a juridical personality.

A formal decree of erection cannot be had except in writing. Since such a decree is needed for the validity of the existence of an association, it is not at all intelligible why certain authors consider this decree "probably not a requisite to validity."[2] The case is different with juridical entities which are invested with moral per-

[2] Bouscaren-Ellis, *Canon Law* (1955), p. 351.

sonality by the Code itself. Though these entities too are usually established by means of a decree or, to be more exact, by means of an instrument (cf. canon 1418), this document " is required merely by way of precept, not *ad valorem,* for the constitution " or erection of these juridical bodies, as explained in a case submitted to the Sacred Congregation of the Council.[3]

The decree of erection, then, constitutes these associations as juridical persons and invests them with all the rights and obligations of an ecclesiastical moral person such as perpetuity (canon 102), the right to acquire, own and administer property (canon 1459, § 2), which thus becomes Church property (canon 1497), to sue and to be sued in ecclesiastical courts (canon 1649), and to be liable to ecclesiastical punishments (canon 2274).

At this point it may be interesting for the reader to take notice of the changes introduced by *Cleri sanctitati* in canons 28 and 534, which correspond to canons 100 and 687 of the Latin Code. Canon 28 exactly reproduces canon 100 of the Latin Code, except for the insignificant change of replacing *sive . . . sive* of canon 100 with *vel . . . vel* in canon 28. But it is otherwise with canon 534. To help the reader to see the difference between them, we transcribe both the canons below.

> Can. 687. Ad normam can. 100, tunc tantum fidelium associationes iuridicam in Ecclesia personam acquirunt, cum a legitimo Superiore ecclesiastico formale obtinuerunt erectionis decretum.
>
> Oriental can. 534. Fidelium consociationes juridicam in Ecclesia personam acquirunt speciali legitimi Superioris ecclesiastici concessione, data per formale decretum.

The reader may easily notice the close connection which canon 687 establishes with canon 100 in the Latin code, while the Oriental canon omits it. According to the Latin canon, associations of the faithful acquire juridical or moral personality in the Church only through a formal decree of erection, and not simply through a decree of approbation or commendation. This necessity of a decree of erection does not appear from the wording of the Oriental canon. The wording of this canon is more uniform with canon 28 than the Latin one is with canon 100. Yet note the comma between *concessione* and *data,* which is lacking in canon 28.

[3] Bouscaren, *Canon Law Digest,* I, 153.

One wonders what the legislator meant to indicate by these changes. Does he want to make a distinction between concession and decree? Is it his intention to say that associations acquire moral personality in the Church by mere concession, which may be verbal, and that a formal decree is needed only by way of precept, and not for validity?

From the foregoing explanations it appears clear that when the Code speaks of moral persons in canons 99-103 it really means to speak of juridical persons. In fact when it comes to apply this doctrine to associations (canon 687) and institutions (canon 1489) set up by the faithful, it rightly calls them juridical persons. But of moral persons in the natural law it nowhere gives a description or definition. Yet in some canons—684, 708 and 1489—the existence of a moral person apart from a juridical one is presupposed and on this presupposition only can these canons be properly understood.

We may now conclude this short essay with Bouscaren (*Canon Law* [1955], p. 351) by drawing up a progressive classified list of associations and non-collegiate persons or institutions in the Church as follows:

1. Voluntary *lay* associations and institutions formed and set up by the faithful for any purpose of charity, piety or cult, based on the natural right of every man as well as of a Christian.

2. Associations and institutes which have been *praised* or *recommended* by the Church for the excellent work they are doing, as for example the St. Vincent de Paul Society, but which have never been formally approved.[4] Hence they still remain lay entities " and are not subject to the Ordinaries as to their existence, constitution, organization, rules, activities and internal government." [5]

3. Associations and institutions *formally approved* by the Church. In virtue of this approval these entities become ecclesiastical, capable of obtaining spiritual favours, and especially indulgences (canon 708). But they do not thereby achieve juridical personality in the Church. They still remain what they are, namely moral persons in the natural law.

All these three categories of moral persons, whether lay or ecclesiastical, whether or not recommended or approved, remain moral

[4] See *Acta et Decreta Primi Concilii Plenarii Indiae*, n. 144.

[5] Bouscaren, *Canon Law Digest*, I, 715.

persons in the natural law, but they are subject to the vigilance of the local ordinary in all that concerns faith and morals (cf. canons 336, § 2; 690). This provision is explicitly stated in the Oriental canon 532, § 2: Associations of the faithful, although they are neither erected nor approved, are nevertheless subject to the vigilance of the local ordinary, who should watch over them lest abuses should creep in; he should correct or repress them, should they have crept in.

We have so far spoken of the right of the faithful to form associations among themselves and of the ways the Church uses in establishing them as juridical persons. Such associations of the faithful are called collegiate legal persons which, though consisting of physical or natural persons, are yet distinct and separate from them. Besides these, there is another kind of persons known as non collegiate persons. These consist not of physical or natural persons, who even as Christians have the natural right to form themselves into associations of various types, but of property, of funds, or of estates. Unlike physical persons, these entities have no right derived from their nature to be the subjects of rights and obligations, to set themselves up as moral persons. Nor do the nature and the exigencies of man necessarily require that these things should be constituted as moral persons. The purpose of such moral persons the Church could as well secure in other ways, for instance, by entrusting the property to physical persons or already existing juridical persons in the Church. Such arrangements are shown in Canon Law as pious foundations (canon 1544). The Church, however, may by her authority constitute or make them subjects of rights and duties as juridical persons.

The faithful may either singly or in union with others set up hospitals, orphanages, asylums and other works of charity, piety or cult. As such they remain lay pious or social works, subject to the supervision of the Church only in matters of faith and morals, as all the lay associations of the faithful. If the founders want the protection or wish to secure the advantages of Canon Law, they must either get the approval or a decree of erection from competent Church authorities. The mere approval makes them ecclesiastical entities and solely renders them capable of receiving from the Church spiritual favors, and especially indulgences, but it does not invest them with juridical personality (cf. canon 708). A decree of

erection on the other hand constitutes those institutions as juridical persons with all the rights and obligations of legal persons, as mentioned above (canon 1489).

* * * * *

4. Finally, associations and institutions *formally erected* either by provision of canon law itself or by means of a special decree of the competent authority. They thus become juridical persons in the Church with all rights and obligations as laid down in the Code or mentioned in the decree.

It thus appears that in the terminology of the Code there are moral persons which are not at the same time juridical persons. The juridical personality derives only from Church authority. When moral persons are mentioned in opposition to juridical persons, as in canon 1495, § 2, the moral personality so distinguished is not derived from Canon Law but from the natural right of the faithful. This point is nowhere stated in the Code, but it certainly is admitted by implication, as we have tried to show. Briefly stated, it all comes to this. Whenever the Code uses the word moral person, as in canon 4, it means to include in the term both moral persons in the natural law and juridical persons according to the canon law. But when it speaks of juridical persons, it refers only to persons constituted or erected by the Church, excluding thereby moral persons derived from the natural rights of her subjects, the faithful.

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Decrees and Decisions

CANONICAL

DESIGNATION OF SAINTS AS PATRONS

By Apostolic Letter of November 19, 1957, Saint Benedict, Abbot, was chosen as heavenly patron of Italian engineers and architects. In another Apostolic Letter, dated February 14, 1958, Saint Clare, Virgin, was named heavenly patron of television.

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NEW INDULGENCED PRAYER

The Sacred Penitentiary, Office of Indulgences, on May 21, 1958, announced that a partial indulgence of three years may be gained for each recitation of a newly composed prayer by priests who preach sermons during missions and by the faithful who are present at such sermons. The " prayer for sacred missions " was composed by Pope Pius XII.

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PONTIFICAL PASTORAL INSTITUTE IN ROME

Pope Pius XII, in an Apostolic Constitution of June 3, 1958, established a Pontifical Pastoral Institute in the city of Rome. The institute, intended for the pastoral instruction of young priests, is under the patronage of Mary, Queen of Apostles, and of Popes Saint Gregory the Great and Saint Pius X. An ordinary course and a higher course are offered, of one and two years' duration, respectively. The subjects include pastoral theology and practice, with special reference to catechetics, kerygmatics and homiletics, pastoral liturgy, spiritual direction, pastoral psychiatry, and the like.

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PRECEDENCE IN THE ORIENTAL CHURCHES

On June 23, 1958, the Pontifical Commission for the preparation of the Code of Oriental Canon Law gave an authentic interpretation of Canon 215, § 2 from *Cleri Sanctitati* (June 2, 1957):

"D. An, vi can. 215, § 2, 'Licet charactere episcopali careant, [Legati] praecedunt tamen omnibus Hierarchis, qui non sint cardinalitia dignitate insigniti,' iidem Legati praecedant Patriarchis.

"R. *Negative,* cum nomine Hierarchae non veniat Patriarcha, ad normam Litt. Ap. *Postquam Apostolicis Litteris,* diei 9 Feb. an. 1952, can. 306, §§ 2, 4."

His Holiness, Pope Pius XII, ordered the following special norm to be inserted in Canon 215, § 2:

"Licet charactere episcopali careant, praecedunt tamen omnibus Hierarchis qui non sint cardinalitia dignitate insigniti, aut patriarchali, dummodo Patriarcha in proprio territorio degat et caeremoniis vel officiis proprii ritus praesit; sed hoc quoque in casu, Legati Patriarchis praecedunt si explicitum mandatum cum praecedentia pro particularibus actibus a Summo Pontifice commissum fuerit."

* * * * *

FORM OF EUCHARISTIC CONSECRATION

On July 24, 1958, the Supreme Sacred Congregation of the Holy Office issued a *monitum* in view of reports that the words *Mysterium fidei* had been omitted from the consecration of the chalice in some vernacular translations of the restored Order of Holy Week and that some priests had even omitted these words at Mass. The Holy Office warned against the evil of introducing such changes and of mutilating or interpolating editions of the liturgical books (cf. Canon 1399, n. 10°). In addition, Bishops were directed, in accordance with the *commonitio* of February 14, 1958, to see to the strict observance of the sacred canons on divine cult and especially to guard against the least change in the matter and form of the sacraments.

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INSTRUCTION ON SACRED MUSIC AND THE LITURGY

On September 3, 1958, the feast of Saint Pius X, the Congregation of Sacred Rites issued an instruction concerning sacred music and the sacred liturgy. The instruction, which has force in all the rites of the Latin Church, consists of 118 sections and includes definitions as well as canonical prescriptions. The legislation concerning sacred music is partially derived from earlier pontifical documents and decrees. Among new matters are norms for various

modes and degrees of lay participation in the sacrifice of the Mass, for which the "dialogue Mass" is authorized as a means of *participatio liturgica directa fidelium.*

The instruction is signed by the Cardinal Prefect of the Sacred Congregation and concludes with this confirmation:

"Hanc de Musica sacra et de sacra Liturgia Instructionem, ab infrascripto Cardinali S. R. C. Praefecto Ss.mo Domino Nostro Pio Pp. XII subiectam, Sanctitas Sua in omnibus et singulis speciali modo approbare et auctoritate Sua confirmare dignata est, atque promulgari mandavit, ab omnibus ad quos spectat, sedulo servandam."

FREDERICK R. MCMANUS

CIVIL

DISCRIMINATION

The defendants were engaged in the building and sale of homes. In their advertising they used F.H.A. and G.I. financing programs to entice prospective buyers. The California Superior Court ruled that the use of federal aid in selling homes brought the defendants within the federal law forbidding discrimination in housing. A private individual could sell to whoever he pleased, but if he enlisted the aid of federal agencies he must place himself within the framework of federal law policy. Ming vs. Horgan decided June 23, 1958.

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GAMBLING CONTRACTS

The Supreme Court of Nevada has denied judicial remedy for the collection of gambling debts which were due from a licensed gambling establishment within the state. The Court ruled that the fact of licensing did not remove the unfavorable position of gambling contracts in the eyes of the law, and hence it is still against the public policy of the courts to enforce such debts. The court suggested that the plaintiff did have an administrative remedy in approaching the licensing bureau of the state. Weisbrod vs. Fremont decided June 30, 1958.

* * * * *

WIRETAPPING

Sec. 605 of the Federal Act which renders the admissibility of evidence obtained by wiretapping invalid does not affect the power of the states to admit such evidence in their own courts. The same evidence which is inadmissible in federal courts may be admissible in state courts if there is a valid statute making such evidence admissible. Pennsylvania Supreme Court decision of July 1, 1958 in the case of Commonwealth vs. Voici.

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HOSPITAL DISCRIMINATION

In the case of Eaton vs. Board of Managers of James Walker Memorial Hospital, the District Court ruled that the fourteenth amendment does not require a private hospital to grant courtesy staff privileges to Negro doctors. Such privileges necessarily include the right to place patients in the rooms and wards. The fact that the hospital received reimbursement from the state for charity patients treated does not constitute such a union with state funds as to render them a state agency and subject to the limitations of the fourteenth amendment. Decided June 24, 1958.

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MENS REA

The federal law requires a narcotic addict to register upon departing from or entering the country. The defendant was a confessed narcotic addict who had no knowledge of the law. Upon conviction of the crime of failure to register, the Ninth Circuit of Appeals sustained the conviction. Knowledge of the criminal statute, or even of its existence, is not a necessary requisite for the commission of the crime, and hence is no defense to a criminal prosecution even if proven. The statute was passed to enable the government to control the flow of illicit narcotics into the country, and Congress was within its power in outlawing " mens rea " as a requisite for the crime. Reyes vs. United States decided July 7, 1958.

JOHN J. MCGRATH

Book Reviews

IN MEMORIAM HERBERT FELIX JOLOWICZ. Butterworth's South African Law Review 1956. T. W. Price and B. Beinart, joint managing editors. Butterworth & Co. (Africa) Ltd., Durban, 1956. Pp. ix-229.

To honor the memory of the late Professor Jolowicz (1890-1954), the editors of this enterprising South African law journal have assembled twenty-one articles, all specially written for this issue with the exception of the first paper, which reproduces an address on the South African Constitution by the Chief Justice of that country, delivered at Harvard in 1955. The articles are contributed by jurists and teachers of law from England, South Africa, Scotland, the United States, Italy, Belgium, and North Ireland. Six of the papers deal with Roman law proper, four with problems in Comparative law, three with general Jurisprudence, two each with Legal education, Medieval law, the jurisprudence of the age of Humanism, and one with the English law on trade unions. Of the articles which attracted the reviewer's interest in particular, the following should be cited here: "Reflections on a Thirty Years' Experience of Teaching Roman Law" by F. H. Lawson, Oxford (pp. 16-21); "The Role of Roman Law in Teaching Law Comparatively" by F. F. Stone, Tulane University (119-126); "A Disputable Consuetudo contra legem in the Later Middle Ages" by W. Ullmann, Cambridge (85-94); "Contractual Agency in Roman Law and English Law" by R. Powell, London (41-56); "The Common Law Cuckoo: Problems of 'Mixed' Legal Systems with Special Reference to Restrictive Interpretation of the Scots Law of Obligations" by T. B. Smith, Aberdeen (147-168). By the variety of topics treated and the international collaboration of so many distinguished writers, the volume is indeed a noble memorial to an outstanding scholar and teacher.

STEPHAN KUTTNER

THE SACRED CONGREGATION DE PROPAGANDA FIDE AND THE REVISION OF THE FIRST PROVINCIAL COUNCIL OF BALTIMORE (1829-1830), Analecta Gregoriana, Vol. LXXXVIII, Series Facultatis Historiae Ecclesiasticae, Sectio B (n. 15). By Thomas F. Casey. Apud Aedes Universitatis Gregorianae, Romae, 1957. Pp. xvi-233.

This book is a doctoral dissertation in ecclesiastical history. It is concerned with the actions of the Sacred Congregation for the Propagation of the Faith after the submission to it of the decrees of the 1829 Provincial Council of Baltimore. Although the author, intending a historical treatment of the matter, does not exhaust the canonical ramifications of the decrees by any means, the book should be of great interest to American canonists. Many of the problems met by the decrees of this Council and considered by the Sacred Congregation in 1830 are remarkably similar to present day issues.

Upon the conclusion of the Council (to which the author devotes a summary chapter) its acts and decrees were sent to Rome. There the Congregation for the Propagation of the Faith sought the opinions of Father Anthony Kohlmann, S.J., and Bishop John DuBois of New York, then in Rome; in addition the archivist of Propaganda submitted a report on some of the matters involved in the conciliar legislation. At a general session of the Congregation, held on June 28, 1830, Cardinal Pietro Caprano, who was *ponens,* presented a lengthy report to the Cardinals. As a result of this an instruction was drawn up, confirmed by Pope Pius VIII on September 26, 1830, and sent to the Archbishop of Baltimore, James Whitfield, on October 16, 1830. It included revisions of the Council's decrees and also faculties which had been requested by the American bishops.

The substance of Father Casey's dissertation is a treatment of the legislation, decree by decree, in order to show the disposition made of each item by the Congregation. He carefully describes the various steps: description of the conciliar legislation and its background; the *vota* of the two consultors and the canonical research by the archivist of the Congregation, where applicable; the report and final opinion of the Cardinal *Ponens;* and the ultimate revisions or corrections, if any. Besides this, he treats the question of the faculties requested; they concerned the rite of Baptism, the

blessing of baptismal water, and the period for Easter Communion.

From this very orderly consideration, it is possible to see clearly some of the attitudes of the American bishops assembled in Council and the corresponding reactions of the Roman authorities who were engaged in correcting the decrees. If the bishops were not always aware of the application of the general ecclesiastical law—in its extremely uncodified state—the Congregation displayed great pastoral concern in its labors, as the author generously points out.

An enumeration of the matters governed by some of the decrees of the First Provincial Council will suggest the importance of this book for an understanding of the ultimate form of the legislation, after the Roman revision. Several decrees were concerned with the stability of the clergy in their assignments and in their dioceses and the recreation of the clergy. Other decrees treated problems arising from American conditions affecting the administration of Baptism in homes, baptizing children of Protestants, age of Confirmation, etc. With regard to Christian doctrine, there were decrees on versions of Scripture, the preparation of a catechism and of schoolbooks, etc.

The usefulness of Father Casey's work is increased by the addition of several tables showing the various positions of the consultors, etc. More important, an appendix includes the first publication of the pertinent documents from the archives of the Congregation for the Propagation of the Faith: the *vota* of Father Kohlmann and Bishop DuBois (the latter does not appear to have influenced Propaganda greatly); the report of the archivist mentioned above; the *relatio* of Cardinal Caprano; and the "final document" prepared by him. The Instruction sent to Archbishop Winfield is not included (although quoted extensively); it is available in *Collectio Lacensis*, III, cols. 22-26. Unfortunately there is no alphabetical index to the dissertation or to these documents.

Father Casey is to be congratulated upon his research into the archives of Propaganda, which will be of assistance to canonists interested in particular legislation for the United States as well as to American church historians. Certainly it is to be hoped that further investigation of these sources will be made, with a view toward a greater knowledge of the activities of the Sacred Congregation in relation to the Church in the United States.

FREDERICK R. MCMANUS

THE INTERNATIONAL CONGRESS OF MEDIEVAL CANON LAW
LOUVAIN, JULY 22-26, 1958

Plans for an international conference of studies in medieval canon law were first laid during the summer of 1957 when the undersigned had the occasion on a European tour to visit a number of colleagues engaged in collaborating, in one way or another, with the Institute of Research and Study in Medieval Canon Law in Washington. As a result of these visits and the ensuing correspondence, the Most Reverend Honoré Van Waeyenbergh, Rector of the Catholic University of Louvain, wrote on December 31, 1957, inviting the undersigned to organize such an international meeting at Louvain, jointly with the Faculty of the School of Canon Law at that University, to take place in July, 1958, as part of the University program for the Brussels World Fair. Such a meeting, Bishop Van Waeyenbergh wrote, would also be a fitting tribute to the memory of the late Msgr. Van Hove, the eminent canonist who had done so much to stimulate historical research at Louvain.

Accordingly, official invitations went out for the *Congrès de Droit Canonique Médiéval* in March, 1958, signed by this writer for the Washington Institute and by the Very Reverend Dean Henri Wagnon for the Canon Law School of Louvain. The letter of invitation recalled the events which, beginning with the commemoration of the eighth centenary of the *Decretum Gratiani* in Bologna, April 1952, had led to the foundation of the Institute in Washington and to the drafting of its initial program at the meeting held by some of its members in Rome, September 1955.

> These years [the invitation continues] have seen a remarkable increase in manuscript studies and investigation of the classical canon law. The time has come to meet again, so that we may take stock of the encouraging progress made by many of our colleagues toward the critical edition of texts, and exchange views on the historical and textual problems of which the experience of the past years has made us aware . . .

The details of the conference were worked out in the weeks that followed by a steering committee, consisting of the two signatories of the invitation and the Rev. Professor Gérard Fransen of the University of Louvain as secretary.

Over fifty scholars from Austria, Belgium, Canada, England, France, Germany, Ireland, Italy, the Netherlands, Portugal, Spain, and the United States took part in the congress. The United States and Canada were represented by Dr. Gaines Post (University of Wisconsin), Rev. Dr. J. Joseph Ryan (St. John's Seminary, Boston, and Pontifical Institute of Mediaeval Studies, Toronto), Dr. Brian Tierney, Rev. Dr. Bernard F. Deutsch, and the undersigned (Catholic University of America), and Rev. Dr. Terence P. McLaughlin, C.S.B. (Pontifical Institute, Toronto). In a gathering which united scholars from so many nations, the absence of Professor Adam Vetulani of the University of Cracow, Poland, was noted with deep regret: the eminent canonist, scheduled to read one of the papers, had at the last minute been refused permission to travel abroad.

The congress opened on July 22 in the Library of the University with an address by Dean Wagnon, who welcomed the guests and spoke briefly about the centuries-old tradition of Louvain in historical studies on the sources of canon law. The undersigned then spoke on behalf of the Washington Institute, gave an outline of its objectives and research program, and concluded the session by reading a letter from the Papal Secretariate of State conveying the personal wishes and the blessings of the Holy Father for the work of the conference. The following is a translation from the French original of the letter:

SEGRETERIA DI STATO DI SUA SANTITA

From the Vatican, July 18, 1958

Dr. Stephan Kuttner
President,
International Congress of Medieval Canon Law

MR. PRESIDENT,

The Sovereign Pontiff has received with deep satisfaction the announcement of the international Congress of Medieval Canon Law which, thanks to the kind welcome offered by His Excellency, Bishop Van Waeyenbergh, will be held from July 22nd to 26th at the University of Louvain, under the joint presidency of yourself and Dean H. Wagnon. By its purpose as well as by the distinction of the persons who are to take part in it, this gathering could not but arrest the attention of the Holy Father, and I am greatly pleased hereby to give expression to his personal good wishes.

After the Congress held at Bologna in 1952 and the precious words of encouragement which His Holiness then extended to the historians of Canon Law, the foundation of the Institute of Research and Study in Medieval Canon Law has given new vigor to the various studies which a critical edition of the canonical texts of the Middle Ages demands. You propose today to take stock of the work already done, to exchange your

experiences and your documentation and thereby to foster, in cordial collaboration, research and publications which will with great profit contribute to a better knowledge of the history of ecclesiastical institutions.

Let me congratulate you. The Church, as you know, is directed by her apostolic zeal towards the future; she greets with optimism the peaceful conquests of science, of which the International Fair of Brussels—where you will hold an official meeting—gives such magnificant testimony. But, made strong by her centuries-old traditions, the Church cannot fail to be aware of the riches of wisdom and experience contained in the history of her institutions and her laws. In encouraging research like yours, she therefore transcends the perspectives of pure erudition, lofty as they are in themselves, and is delighted to enrich the treasure of her past for the benefit of the new tasks which she incessantly faces.

In pledge of the divine favor which He calls down on your work and your persons, the Holy Father cordially imparts to you His Apostolic Blessing.

With the assurance of my sincere devotion,

(s) A. Dell'Acqua
Sostituto

After the session, an exhibition of twenty-four medieval manuscripts and some early printed books of canon law was inaugurated at the Library. The exhibition had been expertly assembled from various libraries of Belgium and Luxembourg by Professor Fransen.

Four working sessions were held in the mornings and afternoons of July 23 and July 25. They were presided over, respectively, by Professors G. Forchielli (University of Bologna), W. Holtzmann (German Historical Institute, Rome), W. Plöchl (University of Vienna), and R. Bidagor, S.J. (Gregorian University). In accordance with the general aims of the meeting, as set forth in the invitation, papers had been selected with a view to covering the main areas of research to which the collaborators of the Institute are committed: the *Decretum Gratiani*, collections before and after Gratian, medieval synodal legislation, the works of the early Decretists and Decretalists. Each paper was followed by an extensive discussion of the problems of research and editing in these various fields. A list of speakers and topics follows:

Mme. Jacqueline Rambaud-Buhaut (Bibliothèque Nationale, Paris): "Les manuscrits du Décret de Gratien: État des travaux."

Adam Vetulani (University of Cracow): "L'origine des collections de décrétales" (not delivered, see above; instead, Dr. Holtzmann gave a brief resumé of recent research in this field).

J. Joseph Ryan (Boston and Toronto): "Observations on the pre-Gratian canonical collections: Some recent work and present problems."

Louis Guizard (Institut Catholique, Paris): "L'étude des anciens statuts synodaux des diocèses de France."

Alfons M. Stickler, S.D.B. (Pontificio Ateneo Salesiano, Rome): "Problemi di ricerca e di edizione per Uguccione da Pisa e nella Decretistica classica."

Gérard Fransen (Louvain): "Les 'questiones' des canonistes: Plan de travail."

Msgr. Charles Lefebvre (S. Romana Rota): "Recherches dans les manuscrits des glossateurs de la Compilatio I: L'oeuvre de Ricardus Anglicus."

Antonio García García, O.F.M. (Colegio de Regla, Chipiona, Cádiz): "Los comentarios de los canonistas a las constituciones del Concilio IV de Letrán (1215)."

Javier Ochoa, C.M.F. (Claretian Institute, Rome): "Problemas biográficos de Vincentius Hispanus."

On July 24, an official session was held at the Palais des Congrès in Brussels, with a stimulating address by Professor Gabriel Le Bras (Paris) on "Le droit canon du moyen-âge au service de l'homme."

The closing session took place in Bruges on July 26, at the Diocesan Seminary, where Bishop De Smedt welcomed the members of the conference and where a special exhibition of medieval manuscripts from the libraries of Bruges had been prepared by Professor Strubbe (University of Ghent). At the end of the meeting, a set of resolutions relating to the various research projects was adopted. These resolutions deal with (a) provisions for pooling information on new discoveries and studies in the collections before Gratian; (b) the establishing of a uniform method for the analytical inventory of all Gratian manuscripts; (c) plans for organizing a similar inventory for the manuscripts of the *Compilatio prima*; (d) provisions for a set of norms to be applied in the critical editions of writings of the Decretists and Decretalists.

Social events during the congress included receptions by the Rector of the University of Louvain; by Drs. Post, Ryan, and the undersigned on behalf of the Board of Directors of the Washington Institute; and by the Mayor of Bruges. Bishop Van Waeyenbergh also offered a banquet on the evening of the second day. The members of the conference visited the Brussels Fair after the session of July 24, and had a full day for seeing the charming sights of Bruges on the day of the closing session. Mention should also be made of the fact that the University of Louvain had provided during the days of the congress for common lodging and common meals in the Justus Lipsius College. All these arrangements greatly contributed to the success of the meeting beyond its immediate scholarly ob-

jectives. The canonists and historians assembled at Louvain had come from different lands, spoke different tongues, and many of them had never met their foreign colleagues before. When the group parted on July 26, a bond of warm, personal relationships had been added to their common professional interests.

Preparations for publishing the Proceedings of the Congress of Medieval Canon Law began immediately after the end of the sessions. The steering committee plans to assemble in a volume all the research papers and addresses; the minutes of the discussions to be edited from the tape recordings taken at the meetings; the catalogue of the manuscripts exhibited; and some pieces of official correspondence. The editorial work on this volume of Proceedings is well under way.

STEPHAN KUTTNER

THE CATHOLIC UNIVERSITY OF AMERICA

"SECULAR INSTITUTES"

With reference to a statement made by Father V. Paul Brassell, S.J., in his article, "Secular Institutes," in the April number of THE JURIST (XVIII [1958], 214), the following correction has been received from Father Charles Connors, C.S.Sp., Holy Ghost Fathers, Norwalk, Connecticut:

"Father Brassell, on page 214, after distinguishing between religious Orders, Congregations, and Societies, gives some examples of the last named and includes 'the Holy Ghost Congregation.' From the context it seems to be clear that he is referring to the Congregation of the Holy Ghost, or Holy Ghost Fathers, or Spiritans, as they are more frequently known on the Continent.

"This is not so. The Congregation of the Holy Ghost is a religious Congregation whose members take public vows and which is governed by the laws of the Code concerning religious. As a matter of fact, though Father Brassell could hardly be expected to have known this, the Spiritans are one of the few Congregations (as distinguished from Orders) which Rome allowed to retain a Rule, in addition to its Constitutions."

Chronicle

His Eminence, Cardinal Agagianian, has been appointed Pro-Prefect of the Sacred Congregation for the Propagation of the Faith by Pope Pius XII.

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The Most Rev. Malcolm La Velle, C.P., was re-elected Superior General of the Passionist Fathers at a General Chapter of the Congregation in Rome.

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The Missionary Servants of the Holy Trinity, founded in 1929 by Father Judge, C.M., have received Pontifical status as a Congregation in virtue of a recently granted decree of praise from the Holy See.

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Monsignor Michael Murphy of Cleveland has been elected President of the Catholic Theological Society of America at its annual meeting in St. Paul, Minn. He succeeds the Rev. John Sweeney, S.J., of Woodstock College, Md.

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Bishop FitzSimon of Amarillo, Texas, died in July. Auxiliary Bishop John L. Morkovsky, has been named Bishop of the diocese.

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The Very Rev. Vernon Gallagher, C.S.Sp., president of Duquesne University, has been elected Provincial Superior of the Holy Ghost Fathers of the United States.

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The Very Rev. Raymond Weisenberger, S.V.D., has been reappointed Provincial Superior of the Eastern Province of the Society of the Divine Word. The Very Rev. Robert Hunter, S.V.D., has been appointed Provincial Superior of the Southern Province and the Very Rev. Nicholas Bisheimer, S.V.D., has been appointed Provincial of the Western Province of the Society.

* * * * *

The Most Rev. John J. Russell, Bishop of Charleston, S. C., has been transferred as Ordinary to the Diocese of Richmond, Va. Installation of Bishop Russell will be on September 30.

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The Very Rev. Donald O'Callahan, O.Carm., was re-elected Provincial of the Carmelite Fathers of the Province of St. Elias.

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Monsignor Michael Hyle of Baltimore has been named Coadjutor with the right of succession to Bishop Fitzmaurice of Wilmington, Delaware.

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The Rev. John Ford, S.J., has joined the faculty of the School of Sacred Theology at The Catholic University of America. Fr. Ford will take over some of the classes formerly taught by the Very Rev. Francis Connell, C.SS.R., who retired from teaching in June.

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The Very Rev. Philippe Le Blanc, M.S., has been named Provincial of the Immaculate Heart of Mary Province of the Missionaries of Our Lady of La Salette.

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Monsignor George Mulcahy of Harrisburg has been named Rector of Mt. St. Mary's Seminary, Emmitsburg, Md.

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The Most Rev. Coleman Carroll, Auxiliary Bishop of Pittsburgh, was installed as the first Ordinary of the Diocese of Miami, Florida, on October 7.

ROMAEUS W. O'BRIEN, O.Carm.

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